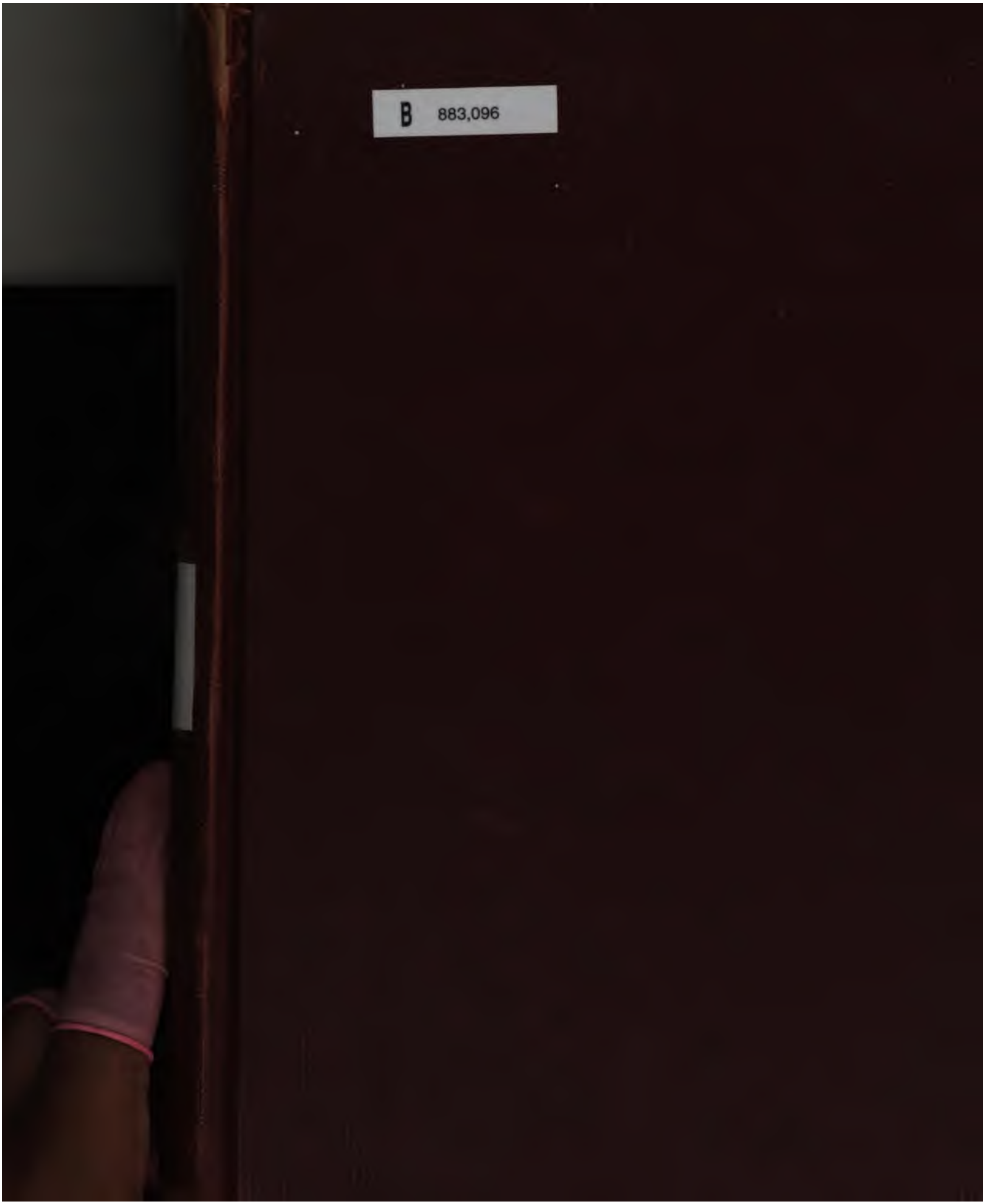
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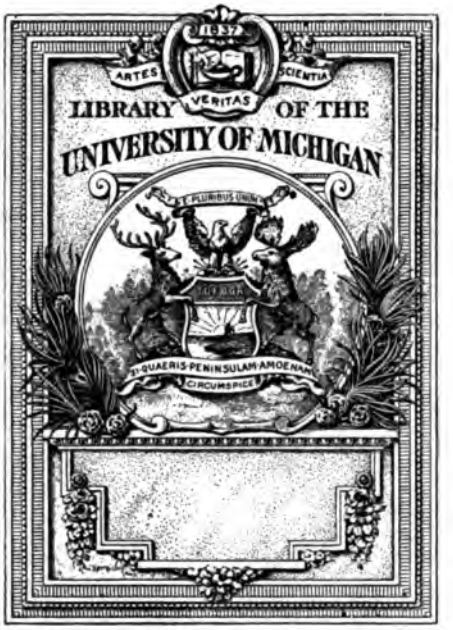
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STUDIES IN THE SOCIAL SCIENCES NUMBER 2

FEDERAL LAND GRANTS TO THE STATES WITH SPECIAL REFERENCE TO MINNESOTA

BY

MATTHIAS NORDBERG ORFIELD, LL.B., Ph.D.

Sometime Instructor in Political Science in the University of Minnesota

MINNEAPOLIS
Bulletin of the University of Minnesota
March 1915

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PREFACE

In the preparation of this monograph valuable assistance has been received from many sources. It will not be possible to acknowledge all of these favors separately, but they are nevertheless remembered with gratitude.

Most of all I am indebted to Professor William A. Schaper, of the Department of Political Science of the University of Minnesota. The investigation was begun at his suggestion and pursued for four years under his supervision, which has been a constant source of inspiration. I am indebted to him for numerous valuable suggestions in regard to the form and subject matter of the monograph and for guidance in locating source material. I cannot overstate what I owe to his assistance.

Among other members of the faculty of the University of Minnesota to whom I am indebted for valuable suggestions, I wish to mention especially Mr. Cephas D. Allin and Mr. J. S. Young, of the Department of Political Science.

Most of the material has been found in the Library of the University of Minnesota, the Minnesota State Library at St. Paul, the Minnesota State Historical Library at St. Paul, and the office of the State Auditor. The help received from the staffs of these libraries and from State Auditor Iverson and his assistants is gratefully acknowledged.

Funds granted by the legislature for the prosecution and publication of research work have made it possible to place the results of this study at the disposal of those interested.

MATTHIAS NORDBERG ORFIELD

May 1, 1913.

INTRODUCTORY

It has been a practice of the United States government for a little more than a century to make land grants to the new states, either at the time of their admission to the Union or subsequently. If these grants had been unrelated they would scarcely be worthy of study, but they are bound up with one another in such a way that the land grants to one state can not be fully understood without a thorough study of all the preceding grants. The practice has gradually developed into a well-defined policy, never departed from save in the case of states in which the federal government owned no public lands, and consequently had none to give, such as Maine, Texas, and West Virginia. It does not follow that the land grants to a state admitted to the Union in 1910 were the same as to one admitted in 1803 or in 1850. But there is traceable an unmistakable process of evolution. The land grants to California in 1853 or to Arizona in 1910 took the form they did largely because of the half-century or century of precedents.

How did there come to be a federal land grant policy? How did that policy develop into its present form? How have the states administered their heritage? It is the purpose of this dissertation to answer these questions.

The first question will necessarily take us back to a study of colonial land grants, for the antecedents of many of the more important features of the federal policy are to be found in the colonies or even in the mother country. The policy might conceivably be traced still further back, but this would lead us too far from the central theme.

In considering the second question it will be my purpose to show that the colonial land grants were an important factor in causing the national government to adopt a land grant policy, and to trace the evolution of that policy.

To give a complete answer to the third question would be much beyond the compass of such a work as this. The administration of the public lands will therefore be studied in detail in one state only, the investigation of the subject in the other states being confined to comparisons of the more important features. But that state will be a typical state, one which has received nearly all of the various kinds of federal land grants. Consequently, as the fairly uniform character of the federal land grants has brought to the various states nearly the same problems, the study of the administration of the public lands in this state will be, in a measure, a treatment of the subject in all.

Certain phases of the history of federal land grants have been worked

out by other men. Much of this work has been done well. But the only treatment of the subject as a whole is "The Public Domain," by Thomas Donaldson, which was published as a government document in 1883, and this is not accurate. For example, on page 217 Mr. Donaldson says: "The acts for the admission of all public-land States up to Nevada, gave to them all the salines not exceeding twelve in number in the respective States, together with six sections of land with each spring for school purposes and public improvements."

There are six errors in this sentence. 1. Not "all public land states up to Nevada" received a grant of salt spring lands. Louisiana, Florida, and California did not. 2. "All the salines" not exceeding a specified number were not given in every case. Ohio received only certain springs that were named or located in the grant. 3. The maximum number of "salines" was not always "twelve." Illinois received all the springs reserved at the time of the grant, which was more than twelve. Indiana and Alabama were limited to six. 4. Two of the states, Ohio and Illinois, did not receive "six sections of land with each spring." 5. The grants were not "for school purposes." Congress did not state for what purpose the grants were made. 6. The grants were not "for public improvements."

It is especially unfortunate that Mr. Donaldson's errors sometimes reappear in the works of other men. On page 261 of his work on "The Public Domain," we find the following statement: "March 2, 1833, Congress authorized the state of Illinois to divert the canal grant of March 2, 1827, and to construct a railroad with the proceeds of said lands. This was the first Congressional enactment providing for a land grant in aid of a railroad, but was not utilized by the state." On page 360 of his doctor's dissertation, "A Congressional History of Railways in the United States to 1850," written at the University of Wisconsin, Lewis Henry Haney says: "In 1833 Congress first authorized the use of a donation of public land for railway purposes." This was not the first time Congress gave authority to use a land grant "for railway purposes." In 1830 the state of Ohio was authorized to use a canal land grant of 1828 for building a railroad to connect Dayton with Lake Erie. (See Laws of United States, VIII, page 282.) John Bell Sanborn, in his study of "Congressional Grants of Land in Aid of Railroads," another doctor's dissertation written at the University of Wisconsin, also appears to have overlooked the act of 1830, for it is not mentioned.

PART I

COLONIAL PRECEDENTS

CHAPTER I

LAND GRANTS FOR THE SUPPORT OF COMMON SCHOOLS

Not many years after the first New England colonists landed on American shores they set aside certain tracts of land for the support of schools. The idea, however, did not have its birth here. The first settlers were Englishmen and they were but adapting the precedents of their native country to a new environment.[1]

Prior to the destruction of the monasteries and chantries of England by King Henry the Eighth, many English grammar schools had owed their support to the income from the church lands. But when the king dissolved these religious corporations and confiscated their lands, the grammar schools went down with their supporters. The English people, however, were too deeply influenced by the intellectual awakening of the Renaissance to stand by unmoved while their means of education was being swept away. Henry's successors on the English throne were importuned by scores of petitions to reëstablish the schools. Several of these were granted. In such cases the schools were endowed with a portion of the sequestered lands.[2]

This was at the time when the tide of Puritan emigration was beginning to flow toward the New World. It therefore appears that the first New England settlers took up their abode in America imbued, not alone with a high regard for education, but also with the idea that one proper mode of helping to promote it was through endowments of public land. Their charters conferred title to land areas which in the early years must have seemed well-nigh boundless. Here, then, was a need and the means at hand of satisfying that need in the English way. Under the circumstances it need not surprise us to find that a part of the public domain was set apart for the support of elementary education.

MASSACHUSETTS

The Massachusetts Bay Colony illustrates most perfectly the development of a policy of land grants for the maintenance of schools. Such grants were either made by the various towns or by the colony as a whole. Whenever a new town was established it received a tract of land from the colony to be distributed among the inhabitants or reserved for public use. It is in the early records of these little pioneer settlements that we find

[1] Instead of making grants exclusively to private schools, as had been the custom in England, the colonists founded public schools and set aside lands for their support.
[2] Traill, *Social England*, 3: 176, 229; Schafer, *Land Grants for Education*, 9.

the story of the first land grants by American communities for the promotion of elementary education.

The town of Dorchester, Massachusetts, appears to have taken the first step in this direction. In 1639 it set apart the rents from a tract of land known as "Tomson's Iland," amounting to twenty pounds a year, for the support of the town school.[3] Two years later the inhabitants of the town made a perpetual grant of "Tomson's Island" for school purposes.[4]

Subsequently a dispute arose as to the title to the land and the decision of the general court was in favor of a private claimant.[5] But in 1659, in response to the petition of the town, the colonial assembly granted to Dorchester one thousand acres to take the place of the land lost.[6] Two years earlier the town had set apart an equal area of its own land for the same purpose.[7]

In 1641 the inhabitants of Boston resolved that "Deare-Island" should be improved for the maintenance of the school at Boston.[8] The next year the town of Dedham resolved to reserve from forty to sixty acres for "the Towne, the Church & A fre Schoole," and in 1644 other lands were set apart for the school.[9]

But while these Massachusetts towns were pioneers in the development of the practice of devoting public land to the promotion of education, the subsequent vast extension of the policy in Massachusetts was due almost entirely to the action of the central government of the colony, the general court. Most of the towns, in fact, made no provision of this kind for their schools. But the colonial government, which at this time numbered in its personnel the pick of the men of Massachusetts in culture and intelligence, came to the assistance of the cause of education. In the records of the general court of the colony for 1659 we read that in answer to the petitions of Charlestown and Cambridge it has judged "meete to graunt to each toune a thousand acres of land, vpon condicon yt they foreuer appropriate it to that vse [the maintenance of a grammar school], & wthin three yeers, at farthest, lay out the same, & put it on improovement; & in case that they faile of majnetajning a grammar schoole during the sajd tjme they shall so doe, the next gramar schoole of wt tounesoeuer shall haue the sole bennefitt thereof."[10] The last clause speaks for itself as to the purpose which the general court had in view in making the grant. The next year

[3] *Dorchester Town Records*, 39. Schafer, in his *Land Grants for Education*, 12, says that "the town appropriated Thomson's Island for the use of the school" in 1639. This is not strictly accurate.
[4] *Dorchester Town Records*, 105.
[5] *Records of Massachusetts Bay*, 3: 217. Schafer, in his *Land Grants for Education*, 13, says that "the general court revoked its former gift to the town." It did not revoke its gift but decided that title had never passed to the town.
[6] *Records of Massachusetts Bay*, 4: pt. 1, 397.
[7] Schafer, *Land Grants for Education*, 13.
[8] *Boston Town Records*, 65.
[9] *Early Records of Dedham, Massachusetts*, 3: 92, 105, 108.
[10] *Records of Massachusetts Bay*, 4: pt. 1, 400.

Boston received a like grant for "a free schoole."[11] At about the same time Roxbury received five hundred acres for its school.[12]

In the laying out of the town of Quansikamund Plantation, later known as Worcester, unusually liberal reservations were made for public purposes. The original grant, embracing sixty-four square miles, was made in 1668, and a settlement was made; but the great Indian war of 1676 caused the place to be abandoned. In the reorganization of the town in 1684 the proprietors made an agreement with the general court providing that eighty of the four hundred eighty "lots" in the town should be rate-free. Of the rate-free lots four were to go to the first minister, four to the use of the ministry, three to the school, and three to the first schoolmaster.[13]

The first half of the eighteenth century saw the establishment of scores of new townships in Massachusetts. In the act of incorporation it was customary to require provision to be made for the maintenance of a minister and a schoolmaster[14] and in a few cases there was a reservation of land for this purpose.[15]

During the same period it was customary for the general court to make grants of townships within the states of Maine and New Hampshire. A grant within the limits of the latter state, made in 1735, was to be laid out into sixty-three shares, "one to be for the first settled minister, one for the ministry and one for a school." These reservations are typical of the grants within this state during the next forty years. The latest of these New Hampshire charters, the Walpole charter of 1773, contains four reservations, the fourth one being for Harvard College.[16]

Up to the year 1750 it was customary to divide the townships granted within the state of Maine into either sixty-three or one hundred twenty-three lots and to make the same reservations as in the case of the New Hampshire townships. After 1761 a reservation for Harvard College was added and the number of divisions was generally sixty-four, but sometimes eighty-four.[17] This practice was still followed at the time when the question of federal land reservations came up for discussion in Congress.

New Hampshire

The reservations for school purposes in the New Hampshire town charters granted by Massachusetts have been referred to above. Two sets of New Hampshire documents reveal a similar policy. These are the charters granted by the government of New Hampshire and the charters given by

[11] *Ibid.*, 444.
[12] *Ibid.*, 438.
[13] *Records of the Proprietors of Worcester, Massachusetts*, 32, 33, 38, 39.
[14] *Acts and Resolves of Massachusetts Bay*, 2: 341, 342, 368, 427, 429, 503, 520, 521, 528, *etc.*
[15] *Ibid.*, 367.
[16] Schafer, *Land Grants for Education*, 27.
[17] *Documentary History*, 11: 121, 139, 446; 12: 57, 58; 13: 253, 261, 263, 329, 407, 419, 420, 421-423; 14: 81, 96, 132, 136, 215, 219, 222, 228.

the Masonian proprietors. The earliest charters of the first class, those of 1722, contained the three usual reservations. The Nottingham charter of that year, for instance, provided "That a Proprietor's Share be Reserved for a Parsonage, another for the first Minister of The Gospel, Another for the Benefit of a School."[18] That of Chichester, given in 1727, was exactly the same.[19] The Kingswood charter of 1737 reserved three hundred acres for the first ordained minister, three hundred acres for the second ordained minister, six hundred acres for a parsonage, and three hundred acres for the use of schools.[20]

From 1748 to 1768 the Masonian proprietors issued charters to forty towns. In every case reservations were made for the first settled minister, for the ministry, and for the school.[21]

Vermont

The territory within the present state of Vermont was claimed by New York, New Hampshire, and Massachusetts. Eager to secure control over this land, New Hampshire made a large number of township grants, most of them after the year 1760. Nearly all of these grants contain one reservation for the first minister, one for the ministry, one for the Society for the Propagation of the Gospel, and one for a school.[22] It is presumably of the school reservations in these townships that the Vermont constitution of 1777 speaks when it directs each town to provide a school and to make proper use of the school lands for that purpose.[23]

After the state of Vermont had established an independent government, threatened as it was by attacks from its neighbor states, it became a matter of necessity for it to build up its resources of money, of men, and of influence. This it sought to accomplish by means of sales of townships to prospective settlers. In authorizing these sales the assembly reserved for public use two, three, four, or five out of from fifty to a hundred shares.[24] These reservations were for the first minister, the support of the ministry, the maintenance of schools, and the support of a college. From 1780 to 1782 nearly a hundred townships with reservations for two or more of these purposes were granted.

Connecticut

In Connecticut as in Massachusetts many towns set aside part of their land for the support of schools. In 1672 the government of the colony

[18] *New Hampshire Town Papers*, 9: 631.
[19] *Ibid.*, 124.
[20] *Ibid.*, 457.
[21] Schafer, *Land Grants for Education*, 32.
[22] *Ibid.*, 33.
[23] *Records of Vermont*, 1: 102.
[24] *Ibid.*, 2: 24. 26. 50. 51. 55. 58. 59. 83. 84, 126-128, 146-150.

adopted the same policy. Six hundred acres of land were granted to each of the towns of "Fayrefeild," "New London," "New Haven," and "Hartford," "for the benefitt of a grammer schoole in the sayd County Townes." In 1719, in a grant of a township in the western part of the state, three of the sixty divisions were required to be set aside for "pious uses,"[25] referring to the first minister, the ministry, and the school.[26]

One of the most important land grants of the colonial period for the promotion of education was made by the general assembly of the colony in 1733. The proceeds from the sale of seven townships on the western frontier were divided among all the organized towns of the commonwealth. The fund was to be permanent, the interest only to be used for the support of the schools. This was the first school fund in America in which the schools of a whole state were the beneficiaries.

In the same act we find the provision that three of the fifty "shares" shall be set apart, "one for the first minister that shall be there settled, to be conveyed to him in fee, one to be sequestered for the use of the present established ministry forever, and one for the use of the school or schools in such towns forever."[27]

Rhode Island

Rhode Island as a colony appears to have made no land grant for the promotion of education, a fact which may be explained by the small land area at the disposal of the colony. The town of Providence, however, in 1663 set apart one hundred six acres for the support of a town school.[28]

The discussion up to this point has served to show that prior to the time of the acknowledgment of American independence by the mother country all of the New England colonies, either through their central governments or their local governments, or both, had made use of land grants for the support of schools. All except Rhode Island had set aside public land for the support of the ministry. Moreover, the practice was not merely occasional. In Massachusetts, Connecticut, New Hampshire, and Vermont it had developed into a fairly uniform policy.

Other Colonies

The practice of devoting public land to the promotion of elementary education was not carried as far in the middle and southern colonies as in New England. Several of the former, however, set apart community land for this purpose.

A Virginia school was the beneficiary of the first land grant for the

[25] *Connecticut Colonial Records*, 1665-1677, p. 176.
[26] *Ibid.*, 1717-1725, p. 127.
[27] *Ibid.*, 1726-1735, pp. 457-459.
[28] *Records of the Colony of Rhode Island and Providence Plantations*, 3: 35.

support of education in the New World. In 1621 the Virginia Company allotted one thousand acres of land and five apprentices to cultivate it toward the maintenance of a "free schoole."[29]

In 1710 South Carolina appointed commissioners to establish a grammar school at Charleston and directed them to provide a suitable tract of land for the use of the master and his successors.[30] In 1734 like provision was made for the master of the school at Dorchester.[31]

In 1723 the colonial government of Maryland required each county to establish at least one boarding school and to provide one hundred acres of land for the maintenance of the master and for the use of the school for firewood and repairs.[32] In 1783 Georgia authorized the governor to grant one thousand acres of land to each county "for erecting free schools."[33] Three years later the public schools of Pennsylvania, left without land grants by the proprietors, received an endowment of sixty thousand acres.[34] Some of the colonies that made no other land grants for elementary education provided sites for school buildings.[35]

How are we to account for the far greater extension in New England of the system of school land grants? There appear to be several reasons. In the first place, during the whole colonial period the middle and the southern colonies were either royal or proprietary. In such colonies the unimproved land was the property of the Crown or of the proprietors. Consequently, even when the freemen were allowed a voice in the government, their power did not extend to disposing of the unoccupied land. In the charter colonies of New England, on the other hand, the freemen had full control of this matter.

New York as a Dutch colony paid very little attention to public education; and, although the same policy did not obtain when it became a proprietary and later a royal province of England, no land grants for school purposes are recorded. The Penns, as proprietors of the land in Pennsylvania, New Jersey, and Delaware, made no land grants for the support of schools. The Baltimores followed the same course in Maryland. In 1671 a well-known royal governor of Virginia made the following statement: "I thank God there are no free schools nor printing, and I hope we shall not have these hundred years; for learning has brought disobedience, and heresy, and sects into the world, and printing has divulged them, and libels against the best government. God keep us from both!"[36] The proprietors of Georgia[37] and the Carolinas made no land grants for schools.

[29] *Records of the Virginia Company*, 1: 550, 559.
[30] *Statutes at Large of South Carolina*, 2: 342-346.
[31] *Ibid.*, 3: 381.
[32] *Bacon's Laws*, 1723, ch. 19, sec. 2, 8.
[33] *Prince's Laws*, 429.
[34] *Laws of the Commonwealth of Pennsylvania*, 2: 450.
[35] *State Records of North Carolina*, 25: 501.
[36] Hening's *Statutes at Large*, 2: 517.
[37] *Colonial Records of Georgia.*

In the second place, the rank and file of the Puritans came from a better class of men than the average immigrant to the southern colonies. The Puritans came from the middle classes of England. A large part of the immigrants to Virginia, Georgia, and the Carolinas were the riffraff of the large cities of the mother country.

Another factor in promoting the cause of education in New England was the favorable attitude taken by the Puritan clergy.

Finally, the compact New England township was far better suited to a public school system than the scattered plantations of the South.

It is significant that Massachusetts required every town having a certain population to maintain a free school, and enforced this requirement by heavy fines.[38]

[38] *Acts and Resolves of Massachusetts Bay*, 2: 100.

CHAPTER II

LAND GRANTS FOR THE SUPPORT OF THE MINISTRY

During the period of American colonization, and for centuries before that time, the English clergy were in a large measure a beneficed clergy, dependent for their support upon the produce of estates of which they were the life tenants. With this nation-wide practice of the mother country before them the English colonists were asked to solve the problem, how to provide a maintenance for their ministry. It is no wonder that they turned to the one heritage with which they were munificently endowed, the land. It is rather a cause for surprise that the policy was not everywhere followed.

The foregoing study of land grants for the support of schools incidentally has served to show that in all the New England colonies, except Rhode Island, the use of land for this purpose generally went hand in hand with land grants for the support of the ministry. The towns, however, especially in Massachusetts, made a much more extensive use of public land for the latter purpose. Dedham in 1642 reserved a small tract for "the Towne the Churche & A fre Schoole."[1] Lancaster in 1653, almost immediately after receiving its allotment from the general court, set aside "for the maintainance of the minestree of Gods holy word . . . . thirty acors of vppland and fortie acors of Entervale Land and twelue acors of meddowe."[2] Plymouth made reservations for the use of the ministry in 1663, 1684, and 1709;[3] Rowley in 1667 and 1669.[4] In the latter year Kittery, a Maine town, assigned one hundred fifty acres in each division of the town "for ye use of ye Ministry for Ever."[5] The same year the proprietors of Worcester reserved fifty acres for religious purposes.[6] In 1682 Cambridge voted to lay out "500 acheres of the remote lands . . . . for the vse & benefitt of the ministry of this Town for euer."[7] Dorchester made its allotment in 1706,[8] Duxbury in 1710.[9] Rochester devoted one "three-and-thirtyeth" part of its land to religious uses.[10]

The practice, however, was by no means universal. In many of the towns the servants of the church relied for their maintenance solely upon contributions in money or in produce.

[1] *Dedham Town Records*, 3: 92.
[2] *Early Records of Lancaster*, 27.
[3] *Records of the Town of Plymouth*, 1: 53, 296; 2: 26.
[4] *Rowley Town Records*, 189, 205.
[5] Maine Historical Society, *Collections, Documentary History*, ser. 2, 12: 131.
[6] *Records of the Proprietors of Worcester, Massachusetts*, 16.
[7] *Records of the Town and Selectmen of Cambridge*, 1630-1703, p. 259.
[8] *Acts and Resolves of Massachusetts Bay*, 5: 335.
[9] *Records of the Town of Duxbury*, 210.
[10] *Acts and Resolves of Massachusetts Bay*, 2: 308.

In the middle colonies very little use was made of public land grants for the support of the ministry. This was due in part to the attitude of William Penn toward the established church as revealed by his charter of privileges of 1680, which relieved all men from forced contributions for the support of religious worship.[11] The Baltimores made no provision for a settled maintenance for the ministers of Maryland, an omission which became a matter of complaint in the council of trade and plantations as late as 1777.[12] Many parishes, however, were provided with glebe lands by private parties.[13] After the Declaration of Independence sites for churches and burying grounds were sometimes provided by the legislature.[14] In 1703 Trinity Church in New York received its churchyard and cemetery grounds by grant from the city government.[15]

In New Jersey, on the other hand, the proprietors, Berkeley and Carteret, in 1664 granted to each parish two hundred acres for the use of the ministry. In 1702, when the colony had become a royal province, the instructions to the governor called for the maintenance of a glebe at common charge.[16]

In all of the southern colonies, where the majority of the settlers were Episcopalians, glebe lands were provided, in accordance with the practice of the Church of England. Such lands were provided with buildings for the use of the acting minister, but did not become his property.

The first land grants in the United States for the support of the ministry were made by the Virginia Company. In 1618 it directed Governor Yeardley to set apart one hundred acres of land in each city or borough toward the maintenance of the ministers.[17] This proved to be insufficient to attract the rectors of the Church of England to this frontier community. As a further inducement the company undertook to provide tenants for each glebe, at the joint expense of the company and the parish.[18] In 1642, after Virginia had become a royal colony, Governor Berkeley was instructed by the king to increase the reservation for glebe lands to two hundred acres.[19]

In 1661 the colonial assembly required every parish which had not already done so to provide a glebe,[20] a requirement which was now more rigidly enforced. This policy was followed until after the Revolution.[21]

[11] *Charters and Acts of the Assembly of the Province of Pennsylvania*, p. x.
[12] *Colonial Records of North Carolina*, 1: 234.
[13] *Bacon's Laws of Maryland at Large*, ch. 38, sec. 1, 2; 1722, ch. 4, sec. 1.
[14] *Laws of Maryland made since 1763*, 1781, ch. 8.
[15] Black, *Municipal Ownership of Land on Manhattan Island*, 21.
[16] *Grants and Concessions of New Jersey*, 25, 638.
[17] "Instructions to Governor Yeardley," in *Virginia Magazine of History and Biography*, 2: 158.
[18] *Records of the Virginia Company*, 1: 314, 352.
[19] "Instructions to Governor Berkeley," in *Virginia Magazine of History and Biography*, 2: 281.
[20] Hening's *Statutes at Large*, 2: 30.
[21] *Ibid.*, 1: 400, 479; 2: 29, 31; 3: 152; 4: 440; 6: 89; 8: 14, 24, 204, 435; 9: 319, 440; 11: 404; 13: 190.

In 1668 the proprietors granted one hundred acres of land to each parish in North Carolina for the support of the ministry.[22] Individual parishes also provided glebe lands.[23] In 1762 each of these local communities was required by the colonial government to set apart not less than two hundred acres of good arable land for this purpose.[24]

A similar policy was pursued in the neighboring colony on the south. In 1704 the six parishes of Berkeley County were required by the central government to provide glebe lands, sites for churches, and burial grounds. The parish of Charlestown had made such a provision for its rector a few years earlier.[25]

In the very first year of the colonizing of Georgia provision was made for a permanent maintenance for the ministry. But here, instead of requiring the local communities to set aside the lands, as was the practice of the other southern colonies, the colonial government made the reservations. Provision was also made for the cultivation of the lands. In this connection, in the record of the meeting of the proprietors of the colony for January 31, 1738, we read an entry the humor of which was perhaps lost on the men of that generation. It was provided "that fifteen Tons of strong Beer be bought and sent over to Genl Oglethorpe, And the Produce thereof be applied for the cloathing and maintaining the Trustees Servants to be employ'd in cultivating Lands for Religious Uses."[26] Grants of land were also made for the support of missionaries.[27]

In concluding the consideration of land grants for the support of the ministry it may be said that by the close of the Revolutionary War the practice of using public land for this purpose had been adopted and consistently followed by all of the New England colonies, except Rhode Island, and by all of the southern colonies. In the middle colonies, on the other hand, it had been resorted to only in New Jersey. That is to say, eight of the thirteen colonies had adopted this policy, to which should be added Vermont, when that community asserted its right to be an independent state.

What about the other five? With the same precedents before them, why did they not adopt the same policy? The well-known attitude of Roger Williams, the founder of the colony, toward an established church is sufficient to explain the absence of public land grants for the support of the ministry in Rhode Island. The same might be said of Pennsylvania. But here there was an even more fundamental reason. The colony was a Quaker colony and for more than half a century the Quaker element was

[22] *Colonial Records of North Carolina*, 1: 174.
[23] *Ibid.*, 680; 7: 495.
[24] *State Records of North Carolina*, 23: 584.
[25] *Statutes at Large of South Carolina*, 2: 237.
[26] *Colonial Records of Georgia*, 2: 262.
[27] *Ibid.*, 253, 321.

the predominating one. But the Quakers had no regularly ordained ministers and their religious speakers held that to accept pecuniary reward for their services would be contrary to the injunction of Christ: "Freely ye have received, freely give."[28] Delaware was governed by Pennsylvania from 1683 to 1703 and remained a dependency until the Revolution. The Quaker element was also important in New Jersey after 1680, and, in connection with the mixed character of the population in nationality and religion, prevented the extension of the policy which the English proprietors adopted in 1664. In Maryland the presence in approximately equal numbers of Catholics and Protestants was a factor in preventing the adoption of the policy.

[28] *Encyclopedia Americana.*

CHAPTER III

LAND GRANTS FOR THE SUPPORT OF SEMINARIES AND COLLEGES

At the time of the first settlement in Virginia and for some years thereafter there existed in England an extraordinary interest in the Christianizing of the Indians. It was this remarkable missionary spirit that led to the first land grant for the support of an American college. In 1618 King James issued a letter to the bishops of England asking them to collect money for the establishment of an institution of learning to educate the natives of Virginia for missionary service.[1] The same year, in its instructions to Governor Yeardley, the Virginia Company directed him to choose a convenient place at Henrico "for the planting of a University . . . . in time to come." In the meantime preparations were to be made for the building of a college "for the children of the Infidels." Ten thousand acres within the borough of Henrico were allotted "for the Endowing of the said University and college with sufficient possessions."[2] Later one thousand acres of this grant were set aside for the "Colledge."[3]

By the next year fifteen hundred pounds had been collected for the support of the institution, a part of which was used by the Virginia Company to provide tenants for the "Colledge" lands, in order to make them immediately productive.[4]

With the exception of the so-called college and university in Virginia, which appear never to have gotten beyond the endowment stage, the great Massachusetts university was the first American institution higher than a grammar school to become the beneficiary of a land grant.

It is interesting to find that the town of Cambridge, to-day one of the greatest centers for higher education in the United States, was the first American community to make a reservation of public land for the support of a college. The following entry, taken from the town records for May 3, 1638, tells the story: "the 2 acres; & ⅔ above mentioned to the Professor is to the Towns vse for eur for a publick scoole or Colledge." The public school referred to was Harvard College and the professor was Nathaniel Eaton, the first American college professor.[5] In 1649 Cambridge granted one hundred acres for the use of the "Colledge" and four hundred acres

[1] *Records of the Virginia Company*, 1: 220.
[2] "Instructions to Governor Yeardley," in *Virginia Magazine of History and Biography*, 2: 159.
[3] *Records of the Virginia Company*, 1: 268.
[4] *Ibid.*, 1: 220, 230, 234, 256.
[5] *Records of the Town and Selectmen of Cambridge*, 1630-1703, p. 33.

to the president of the institution.[6] During the course of the century various other grants followed.[7]

In 1640 the legislature of the colony gave to the little school at Cambridge the ferry between Boston and Charlestown,[8] but it was not till twelve years later that this was followed by a land grant. In 1652 the general court granted to the college eight hundred acres of land. In 1653 the general court devoted two thousand acres to "the incouragment of Haruard Colledge, & the societie thereof, & for the more comfortable mayntenance and prouision for the psident, ffellowes, & studente thereof, in time to come."[9] In 1683 there was added to the endowment of the institution "Merrykoneag necke," within the present state of Maine, and one thousand acres of land adjoining.[10]

In connection with the study of school lands reference was made to the reservations for Harvard College in the grants of townships. One of the first of these was made in 1762, one sixty-fourth part of six townships. From this time until 1774 at least twenty-nine townships were granted within the present state of Maine, all of them containing reservations for Harvard College, generally one sixty-fourth part of the township, but in several cases one eighty-fourth.[11]

For a number of years after the first settlement the colonists at New Haven made grants of grain, called "colledge corne," for the maintenance of the institution at Cambridge.[12] But they were ambitious to have a college of their own and were anxiously waiting for the time when they would be able to meet the necessary expense.[13] Some time before 1660, by the reservation of a tract of land known as "Oyster-shell-feild," a modest beginning was made toward the endowment of the great New Haven university of the future.[14] In 1715, 105,793 acres obtained by Connecticut from Massachusetts in settlement of a boundary dispute were ordered to be sold and five hundred pounds of the proceeds paid to the college at New Haven "for the building a college house."[15] This was followed in 1732 by a

[6] *Ibid.*, 82.
[7] *Proprietor's Records of the Town of Cambridge*, 165, 171, 246, 247.
[8] *Records of Massachusetts Bay*, 1: 304.
[9] *Records of Massachusetts Bay*, 3: 299; 4: pt. 1, 114.
[10] *Ibid.*, 5: 397. The account of the land grants to Harvard College given by Frank W. Blackmar, Ph.D., on page 90 of his monograph on "Federal and State Aid to Higher Education in the United States," published in United States Bureau of Education, *Circular of Information*, No. 1, 1890, is not accurate. He says: "In 1652 the court granted eight hundred acres of land to the college; in 1653, two thousand acres; and in 1683, one thousand acres.
"In 1657 the court also granted two thousand acres in Pequot County, and subsequently, in 1682, granted a large tract on Merriconeag Neck."
There was no new grant of 2,000 acres in 1657, but on March 23, 1658, 2,000 acres were laid out for the college "in lejw of" the 2,000 acres granted in 1653. (See *Records of Massachusetts Bay*, 4: pt. 1, 344.) Nor was there a tract on "Merriconeag Neck" granted in 1682. This grant was made the next year at the same time as the grant of 1,000 acres to which Blackmar refers.
[11] Maine Historical Society, *Collections*, 13: 253, 258, 261, 263, 329, 407, 419, 420, 421, 423; 14: 81, 96, 101, 132, 162, 163, 164, 165, 215, 219, 222, 228.
[12] *New Haven Colonial Records*, 1638-1649, pp. 149, 210, 225, 311, 318, 354, 357, 382.
[13] *Ibid.*, 1653-1665, p. 141.
[14] *Ibid.*, 372.
[15] *Colonial Records of Connecticut*, 1706-1716, p. 529. New Haven and Connecticut had now been united. The whole tract brought only 683 pounds.

grant of three hundred acres in each of five townships just laid out in the western part of the colony.

In 1746 the institution which has become Princeton University received its first charter under the name of the College of New Jersey. Six years later, when the original location was abandoned and Princeton was chosen for a permanent home, the inhabitants of the town granted to the little school ten acres for a campus and two hundred acres of woodland.[16]

Dartmouth College owes its origin to the efforts of Reverend Eleazar Wheelock to establish a school for the education of the Indians for missionary service among their own tribesmen.[17] In 1771 the town of Hanover, New Hampshire, in which the college was finally located, granted to the school three hundred acres of land.[18] The year before the provincial government had given to the trustees of the institution the township of Landaff. The title to this tract proved to be defective; but in 1789 compensation was made to the college by the grant of 40,960 acres on the Connecticut River.[19]

After the separation from England the land holdings of many of the colonies were greatly increased by the taking over of the Crown lands and the confiscation of the estates of the loyalists. In several of the states a portion of this land was used for the endowment of colleges.

In 1780 Virginia donated eight thousand acres of her recently acquired lands within the present state of Kentucky "for the purpose of a publick school, or seminary of learning," to be established west of the Alleghanies.[20] Three years later these lands were given to Transylvania Seminary.[21] In 1784 several tracts of land near Williamsburg and Jamestown were granted to "William and Mary university."[22] From the time of its establishment in 1693 this college had received government aid, but not in the form of land grants.[23]

During the Revolutionary period and the years immediately succeeding, the most extensive grants for the support of colleges were made by the new state of Vermont. Reference has been made to the reservations for a a college in the township grants by New Hampshire before the war and the reservations for the same purpose by Vermont during the final years of the war. So extensive were these reservations that in 1787 provision was made for the appointment of an overseer in each county to care for the college

[16] David Murray, "History of Education in New Jersey," United States Bureau of Education, *Circular of Information*, 1899, pp. 212, 227-228.
[17] F. W. Blackmar, "The History of Federal and State Aid to Higher Education in the United States," United States Bureau of Education, *Circular of Information*, 1890, pp. 116-117.
[18] Hammond, *Town Papers, New Hampshire*, 12: 159.
[19] *Ibid.*, 361.
[20] Hening's *Statutes at Large*, 10: 288.
[21] *Ibid.*, 11: 283.
[22] *Ibid.*, 11: 406.
[23] *Ibid.*, 3: 123.

lands.[24] The policy was further extended in 1785 by the granting of twenty-three thousand acres to Dartmouth College.[25]

In 1779 the legislature of Pennsylvania authorized the executive council to reserve as many of the confiscated estates as might be necessary for the support of the provost and masters of the College, Academy, and Charitable School at Philadelphia, the present University of Pennsylvania.[26] The yearly income of the institution from this source was not to exceed fifteen hundred pounds. In 1786 Dickinson College became the beneficiary of a grant of ten thousand acres.[27] The next year Franklin College received a similar endowment.[28]

In 1782 the legislature of Maryland gave the "visitors of Kent County School" authority to raise the school to the rank of a college and granted to the new institution the lands of its predecessor.[29] Two years later it offered a campus to St. John's College in case it should choose to locate at Annapolis.[30]

In a measure ordering the survey of two or more new counties the Georgia legislature of 1784 provided for the reservation of twenty thousand acres of land in each county for the endowment of a college or seminary of learning.[31] This grant was a first step toward the establishment of the University of Georgia.

The College of Charleston was incorporated in 1785 and was vested with the land provided for the free school at Charleston half a century before.[32]

In 1789 the act of incorporation of the University of North Carolina provided that all property that had theretofore or should thereafter escheat to the state should be vested in trustees for the benefit of the University.[33]

The next year New York devoted several large tracts of land to the support of Columbia College,[34] an institution to-day known as Columbia University.

Prior to 1787, the time when the question of federal land grants for the support of universities came up for serious consideration in Congress, eight of the original thirteen states had made use of public land for the maintenance of institutions of learning of college rank. In a ninth, New Jersey, the only land grant of this kind had come from a local community. Two other states, North Carolina and New York, adopted the policy within the next three years. Delaware and Rhode Island had no college until the next century.

[24] *Statutes of the State of Vermont*, 209.
[25] *Vermont State Papers*, 497.
[26] *Laws of the Commonwealth of Pennsylvania*, 1: 816; 2: 413.
[27] *Ibid.*, 2: 450.
[28] *Colonial Records of Pennsylvania*, 15: 657.
[29] *Laws of Maryland Since 1763*, 1782, ch. 8, sec. 2: 113.
[30] *Ibid.*, 1784, ch. 37, sec. 7.
[31] Prince, *Laws of Georgia to 1820*, 273.
[32] *Statutes at Large of South Carolina*, 4: 674-675.
[33] *Public Acts of General Assembly of North Carolina*, 1: 474.
[34] *Laws of New York, 1777-1801*, 3: 162-163.

CHAPTER IV

LAND GRANTS FOR MILITARY PURPOSES

Land grants for military defense took two forms during the colonial and Revolutionary period: to encourage the settlement of armed men on exposed frontiers and to reward soldiers for military service. Virginia adopted the former method in 1679 to guard against the incursions of hostile Indians. A tract of land on the Rappahannock River containing about forty-four square miles was granted to a military officer upon condition that he locate two hundred fifty settlers upon it within fifteen months and keep fifty of them equipped with arms and in readiness to repel an attack at a moment's warning. Provision was made in the same manner for the defense of the region at the headwaters of the James.[1]

In 1701 the colonial assembly offered ten thousand acres of land to any group of men that should settle on an unprotected frontier and maintain there twenty men fully equipped for military service. For every additional soldier the grant was to be increased by five hundred acres, the total, however, not to exceed thirty thousand acres.[2] The executive council of Georgia, in 1778, proposed a similar system for the Florida frontier.[3]

In 1696 Connecticut granted a township to a company of volunteer soldiers in reward for their services in a war with the Narragansett Indians.[4] In 1755 the proprietors of Pennsylvania, to regain possession of their western lands and to safeguard them against future encroachments, offered a bounty, varying from two hundred to one thousand acres, according to the military rank of the grantee, to every man who should join the expedition to drive the French from the Ohio and who should settle on the land within a fixed time thereafter.[5]

At the close of the French and Indian War in 1763 the King of England granted to every private soldier who had served in that war fifty acres of land, to non-commissioned officers two hundred, and so on up to five thousand for field officers.[6]

It was, however, not until the commencement of the War for Independence that land grants were used extensively for soldiers' bounties During this critical period the burden of taxation became exceedingly oppressive

[1] Hening's *Statutes at Large*, 2: 448-452.
[2] *Ibid.*, 3: 204-207.
[3] *Revolutionary Records of Georgia*, 2: 50.
[4] *Colonial Records of Connecticut*, 1689-1706, p. 186; Connecticut Historical Society, *Collections*, 3: 300.
[5] *Colonial Records of Pennsylvania*, 6: 504.
[6] *Laws of the United States*, 1: 446.

in many of the states. Gold and silver money retreated into the strong-boxes of the well-to-do and continental currency became almost worthless. Accordingly, when the Crown lands and the confiscated estates had been added to their land holdings, the states naturally resorted to land bounties to encourage enlistments or to pay for services rendered.

Connecticut was quick to fall back upon the expedient she had relied upon as a colony. In 1776 she promised a land grant of one hundred acres to all soldiers who should serve during the course of the war.[7]

In 1778 South Carolina, apparently copying the Rhode Island act, offered a land bounty of the same amount and upon practically the same condition. In the event of the death of a soldier while in service the land was to go to his heirs.[8]

Virginia, the state with the largest land holdings in the West, adopted the policy the next year. Every private who should enlist to serve to the end of the war and who should complete his term was to receive one hundred acres. Officers were promised the same amounts as officers of the Continental Army.[9] Subsequent acts extended the land grants to army surgeons and chaplains,[10] increased the grant to soldiers to three hundred acres,[11] and made the right to receive land inheritable.[12] The provision for officers was especially liberal. Major generals were given fifteen thousand acres, brigadier generals ten thousand, and the lower ranks in proportion.[13]

In 1779 Maryland offered fifty acres to soldiers who should enlist for three years, and one hundred acres to each recruiting officer who should secure the enlistment of twenty men within a specified time.[14] Pennsylvania in 1780 provided for a bounty varying in amount from two hundred acres for a private soldier to two thousand acres for a major general.[15] Providing the grantee did not dispose of the land, it was to be exempt from taxation during his life.[16]

The same year North Carolina provided that every soldier who should serve three years or to the end of the war should receive "one prime slave" and two hundred acres of land.[17] Two years later the land grant to private soldiers was increased to six hundred forty acres and liberal provision was made for officers.[18] The distinguished Rhode Island general, Nathaniel Greene, received a grant of twenty-five thousand acres, presumably in recognition of his brilliant southern campaign.[19] Georgia followed a similar pol-

[7] *Records of the State of Connecticut*, 1: 66.
[8] *Statutes at Large of South Carolina*, 4: 411.
[9] Hening's *Statutes at Large*, 10: 24.
[10] *Ibid.*, 141.
[11] *Ibid.*, 331.
[12] *Ibid.*, 161.
[13] *Ibid.*, 375.
[14] *Laws of Maryland Since 1763*, 1779, ch. 36.
[15] *Laws of the Commonwealth of Pennsylvania*, 2: 89-90, 272.
[16] *Ibid.*, 1: 834.
[17] *State Records of North Carolina*, 24: 338.
[18] *Ibid.*, 420.
[19] *Ibid.*, 421.

icy.[20] Rhode Island devoted the confiscated estates of the loyalists to the payment of the arrears of the wages of her troops.[21]

A New York act of 1781 offered a bounty of five hundred acres to private soldiers who should enlist for three years, and larger amounts to officers. The same measure sought to encourage the enlistment of negro slaves by offering to the master five hundred acres for each slave who should join the army and to the slave his freedom at the end of three years.[22] The next year six hundred acres were offered to any one who should furnish an able-bodied man for three years' service.[23]

In 1786 sixty-four square miles of land were granted to the "sufferers in opposing the government of the pretended state of Vermont."[24]

During this period the Continental Congress, even though it owned not one acre of land, encouraged enlistments by means of promises of land bounties.

[20] *Revolutionary Records of the State of Georgia*, 2: 791; *Laws of Georgia to 1820*, 264.
[21] *Records of the State of Rhode Island and Providence Plantations*, 9: 171, 608.
[22] *Laws of New York*, 1: 350-351.
[23] *Ibid.*, 432.
[24] *Ibid.*, 2: 338.

CHAPTER V

LAND GRANTS FOR THE PROMOTION OF INDUSTRIES AND UNDERTAKINGS OF PUBLIC INTEREST

In an age of steam and electricity it is difficult to understand the situation of a frontier community of the seventeenth century separated from its home land by three thousand miles of ocean. In the early years every industry was necessarily an "infant industry"; and yet, with the means of communication with the mother country slow and uncertain, it was primarily to the products of these undeveloped industries that the colonists must look for their support. Under circumstances such as these the man who could grow more corn than his fellows or who knew how to harness the wind or the waterfall was not merely successful as an individual; he was a public benefactor. In order to encourage the activity of such men every colony resorted to artificial means.

There were bounties for flour mills, sawmills, and rice mills; for salt works, iron works, and glass works; for shipbuilding; for silk culture; for Indian corn, oil, wheat, barley, peas, potatoes, cotton, hemp, indigo, and ginger; for the setting out of vineyards; and for the killing of wolves and panthers.[1] The bounties took three forms, bounties in money, exemption from taxation, and grants of land. The last of these is the only one that here concerns us.

Especially urgent was the need for mills. At first the corn for each loaf of bread had to be ground by hand in a mortar, or parched, Indian fashion. Each piece of timber for the dwelling houses and stockades had to be hewn by hand from the rough logs felled in the forest.[2] Here was a pressing need for flour mills and sawmills. But for an individual to set up a mill was a big undertaking in those days, the more so that the machinery had to be imported from England at great expense. Therefore, in order to secure these necessities of civilized life, many towns and several of the colonies offered inducements in the form of land grants.

One of the first examples of the use of public land for the promotion of a public enterprise on this side of the Atlantic was the Watertown grant of 1635: "to the vse of the Water Mill Twenty Acres of ground neare to the

[1] *Acts and Resolves of Massachusetts Bay*, 2: 240; *Early Records of Providence*, 8: 36; 11: 158; *Grants and Concessions of New Jersey*, 448; *Colonial Laws of New York*, 4: 737; *Charters and Acts of Assembly of Pennsylvania*, 61: 9; Hening's *Statutes at Large*, 8: 363, 365; 9: 125; *State Records of North Carolina*, 24: 978; *Statutes at Large of South Carolina*, 2: 388; 3: 613; *Colonial Records of Georgia*, 1: 528, 2: 368.

[2] *Early Records of Lancaster, Massachusetts*, 31.

Mill and foure Rod in breadth on either side the water and in length as farre as need shall require."[3]

Two years later Dedham, another Massachusetts town, adopted the same policy. The town record for March 23, 1637, reads in part: "Whereas ther hath been made some pposicons by Abraham Shawe for ye erecting of a Corne Mill in our Towne. We doe now grante vnto ye sayd Abraham Sixty Acres of Land to belong vnto ye sayd Mill soe erected pvided allwayes yt the same be a Water Mill, els not."[4] The grantee evidently did not carry out his agreement, for in the town records for 1639 the following paragraph appears: "Ordered yt yf any man or men will vndrtake & erect a water Cornemill shall haue given vnto him soe much grownd as was formrly granted vnto Abraham Shawe for yt same end & purpose wth such other benefitts and privelidges as he shold haue had in all Respects accordingly provided yt ye sayd Mill doth grinde Corne before ye First of ye tenth month as it is Intended."[5]

The town of Rowley, Massachusetts, made use of the same policy to secure a mill. The earliest account is lost, but a record of the laying out of the lands, made in 1643, gives sufficient information. The record reads: "Impr to Mr Thomas Nelson thirty six Acres of vpland in the ffield called the Mill ffield twenty six whereof was laid out to him as pt of his first diuision of vpland the other tenn was giuen him for incouragement towards building the Mill."[6] The grant was probably made in 1639, when the town was founded.

The town of Lancaster exemplifies the policy even better. In the town records for November 20, 1653, which was less than a year from the time of the first considerable settlement, there is an account of a "covenant," as it is called, which reads as follows: "This witnesseth that wee the Inhabitants of Lanchaster for his encouragement in so good a worke for the behoofe of our Towne, vpon condition that the said intended worke by him or his assignes be finished, do freely and fully giue grant, enfeoffe, & confirme vnto the said John Prescott, thirty acres of intervale Land lying on the north riuer . . . . and ten acres of Land adjoyneing to the mill: and forty acres of Land on the South east of the mill brooke. . . . . To haue and to hold for euer. . . . . And also wee do couenant and grant to and with the said John Prescott his heyres and assignes that the said mill, with all the aboue named Land thereto apperteyneing shall be free from all comon charges for seauen yeares next ensueing, after the first finishing and setting the said mill to worke."[7] It is significant that temporary exemption

[3] *Watertown Records, Massachusetts*, 1.
[4] *Dedham Town Records*, 3: 28-29.
[5] *Ibid.*, 3: 51.
[6] *Records of Rowley, Massachusetts*, 34.
[7] *Early Records of Lancaster, Massachusetts*, 32.

from taxation, so characteristic of state grants for public improvements, was a feature of the earliest colonial grants.

Prescott seems to have been the one enterprising man in the community, for at a town meeting five years later it is he who offers to set up a sawmill upon condition that he be given title to a certain one-hundred-and-twenty-acre lot, that the mill and saws shall be freed from the town rates permanently, and that the land shall be similarly exempt until improved. The "mocion" of "goodman Prescott" was granted upon condition "that the inhabitants of the Towne, should bee suply with boards and other sawing on such termes" as were "vsually aforded att other saw milles in the cuntrie."[8] The same policy was followed in Providence, Rhode Island,[9] and Upland, Delaware,[10] in 1678, Worcester, Massachusetts, in 1684,[11] Southhold, New York, in 1706,[12] and Rutland, Massachusetts, about 1713.[13] As late as 1777 the legislature of Georgia offered to grant one hundred acres to any person who should erect a flour mill and five hundred acres to any person who should erect a sawmill on unappropriated state land.[14]

Most of the colonial governments did not make land grants for this purpose; but other inducements were held out for the establishment of mills. Maryland,[15] Virginia,[16] and North Carolina[17] authorized any person desiring to erect a "water" gristmill to acquire a suitable site by eminent domain in case the owner failed to erect a mill. In 1712 South Carolina offered an eight-year monopoly to any person who should erect a sawmill or gristmill driven by wind or water power and should bring it to the same degree of perfection as the mills of Europe.[18]

Various other undertakings of public importance received assistance in the form of land grants. In 1638 Boston granted a hundred acres towards the maintenance of the "Wharfe and Crayne."[19] In 1653 Watertown, Massachusetts, granted two acres of land to a brickmaker upon condition that he remain in the town and engage in the manufacture of bricks.[20] In 1664 the proprietors of West Jersey, Berkeley and Carteret, donated land for highways, streets, "Churches, forts, wharves, kays, harbours and publick houses."[21] The next year the proprietors of North Carolina, among whom were Berkeley and Carteret, made the same grant to the southern colony. Such lands were exempted from all proprietary dues. The assembly of West

[8] *Ibid.*, 56.
[9] *Early Records of Town of Providence, Rhode Island*, 8: 36.
[10] Hazard's *Annals of Pennsylvania*, 1609-1682, p. 451.
[11] *Records of the Proprietors of Worcester, Massachusetts*, 38.
[12] *Southold, New York, Town Records*, 11: 435.
[13] *Acts and Resolves of Massachusetts Bay*, 2: 246.
[14] *Laws of Georgia to 1820*, 261.
[15] *Laws of Maryland at Large, 1701*, ch. 16.
[16] Hening's *Statutes at Large*, 6: 55-56.
[17] *Colonial Records of North Carolina*, 2: p. xii.
[18] *Statutes at Large of South Carolina*, 2: 388.
[19] *Boston Town Records*, 1: 1634-1661, p. 37.
[20] *Watertown Records*, 32.
[21] *Colonial Records of North Carolina*, 1: 92.

Jersey in 1683 rewarded the builders of the court-house and market at Burlington with a grant of two thousand acres of land.[22] Two years later the colonial assembly of Massachusetts gave one thousand acres of land to certain persons as compensation for "searching for metals."[23] In 1699 the town of Providence granted a site for a blacksmith shop[24] and, later, for a shipyard.[25]

Iron was another necessity the production of which several of the colonies encouraged, especially during the Revolutionary War, when it was needed for military equipment and could not easily be imported.

In 1644 the general court of Massachusetts granted nine square miles of land to certain men who had undertaken to set up iron works. The land, however, was not to be located until the works should be completed.[26] In 1777 Georgia promised two thousand acres to any one who should set up a furnace for working iron or a forge for making bar iron and who should operate it for five years.[27] In 1786 Patrick Henry interested himself in persuading the government of North Carolina to give a land bounty for the setting up of iron works.[28] Two years later three thousand acres of land were offered for every set of iron works that should be constructed.[29]

Georgia granted five hundred acres of land in compensation for the building of a lighthouse.[30] After the Revolution it offered one thousand acres of land to have its public records brought back to the state.[31]

Several of the colonies also made use of public land to support public officials and to reward the public services of men of distinction. This was especially true of Virginia. As early as 1617 the Virginia Company instructed its representative in the colony to lay out three thousand acres of land near Jamestown for the use of the governor and his successors.[32] Fifteen hundred acres were set apart for the support of the treasurer, the same amount for the marshal and the company's deputy, and five hundred acres each for the colony secretary and the colony physician. These allotments were provided with tenants and the produce of their land constituted the remuneration of these officials.[33] In 1674, in consideration of his services to the colony, Virginia granted one thousand and ninety acres to Sir William Berkeley.

In 1682 the province of West Jersey granted to Thomas Revell a tract

[22] *Grants and Concessions of New Jersey*, 466.
[23] *Records of Massachusetts Bay*, 5: 482.
[24] *Early Records of Town of Providence*, 11: 49-50.
[25] *Ibid.*, 158-159.
[26] *Records of Massachusetts Bay*, 2: 81.
[27] *Laws of Georgia to 1820*, 261.
[28] *State Records of North Carolina*, 18: 787.
[29] *Ibid.*, 24: 978.
[30] *Colonial Records of the State of Georgia*, 2: 425.
[31] *Revolutionary Records of Georgia*, 3: 563. The records had been carried out of the state for safety.
[32] "Instructions to Governor Yeardley," in *Virginia Magazine of History and Biography*, 2: 155.
[33] *Records of the Virginia Company*, 1: 371, 454, 465; Hening's *Statutes at Large*, 1: 115.

of land in payment for his work on the public accounts.[34] The next year Governor Jenings received six hundred acres as compensation for his "great trouble and necessary charges" in the capacity of chief executive.[35]

In 1784 the legislature of New York rewarded Thomas Paine for his "eminent services" during the war with a grant of a township of land.[36]

[34] *Grants and Concessions of New Jersey*, 462-463.
[35] *Ibid.*, 471.
[36] *Laws of New York*, 1: 751.

PART II

LAND GRANTS TO THE STATES AND TERRITORIES

CHAPTER I

ORIGIN OF THE PUBLIC DOMAIN

The original charters of six of the thirteen colonies made the Pacific Ocean their western boundary. The Virginia charter of 1609 gave a territory extending "from Sea to Sea, West and Northwest."[1] The Massachusetts Bay grant of 1629 extended "throughout the Mayne Landes there, from the Atlantick and Westerne Sea and Ocean on the East Parte, to the South Sea on the West Parte."[2] In the Connecticut charter of 1662 the form of the grant was "to the South Sea on the West Part";[3] in the North and South Carolina charter of 1663, "to the west as far as the south seas";[4] and in the Georgia charter of 1732, "westerly . . . . in direct lines to the south seas." New York, by virtue of treaties with the Six Nations and their allies, asserted a claim to Ohio and part of Kentucky.[5]

There were thus seven states which laid claim to western territory. At the outbreak of the Revolution six of these were royal colonies and their unoccupied lands belonged to the Crown. But when the Declaration of Independence, backed by the power of the sword, had made them sovereign states, they asserted the right to succeed to the English sovereign's title to the vacant lands.

The Treaty of Peace of 1783 made the Mississippi the western boundary of the thirteen states. No state could claim lands west of that river thereafter. But the six states referred to above claimed land as far west as the Mississippi, while New York asserted the right to a block of land west of her present limits.

The states with no western land refused to concede that the claims of the seven were well founded. To them it seemed that as the thirteen states had fought the war together they should share together the fruits of victory. Maryland, New Jersey, Delaware, and Rhode Island urged upon Congress the propriety of incorporating in the Articles of Confederation a provision to the effect that the western lands should become the common property of the United States.[6] In this they failed. Thereupon Maryland refused to ratify until the land-owning states should make concessions. In February, 1780, New York authorized her delegates to cede her western lands.[7] On

[1] Poore, *United States Charters and Constitutions*, 2: 1897.
[2] *Ibid.*, 1: 933.
[3] *Ibid.*, 257.
[4] *Ibid.*, 2: 1383.
[5] *Ibid.*, 1: 373; H. B. Adams, "Maryland's Influence Upon Land Cessions to the United States," in Johns Hopkins University, *Studies in Historical and Political Science*, 3: 21.
[6] *Secret Journals of Congress, Domestic Affairs*, 369, 372, 377, 429.
[7] *Laws of the United States*, 1: 468.

the sixth of September of the same year Congress recommended to the states claiming western lands "a liberal surrender of a portion of their territorial claims."[8] The next year Virginia, which on the strength of the clause in her charter, "West and Northwest," had laid claim to almost the whole of the Northwest Territory, offered to cede her western land upon certain conditions. Then, and not till then, did Maryland give her assent to the Articles of Confederation.[9]

By 1786 all the states claiming land within the Northwest Territory, namely, New York, Virginia,[10] Massachusetts,[11] and Connecticut,[12] had ceded their western lands. There were certain important reservations, but these did not constitute a large proportion of the total area. North Carolina made her cession, embracing the land within the present state of Tennessee, in 1790,[13] subject, however, to so many claims that there was scarcely enough land within the state to liquidate them all.[14] South Carolina made her cession in 1787[15] and Georgia hers in 1802.[16] This brought to the federal government the public lands within the later states of Alabama and Mississippi. In this way the public domain of the United States had its beginning and federal land grants became a possibility.

The subsequent extension of the public domain by purchase, annexation, and conquest is a matter of such common knowledge that it may be described very briefly. The purchase of Louisiana in 1803 and of Florida in 1819, the annexation of Texas in 1845, the definite acquisition of the "Oregon Country" in 1846, the cessions from Mexico in 1848 and 1853, the purchase of Alaska in 1867, the annexation of Hawaii in 1898, and the cessions from Spain at the close of the Spanish-American War mark the important additions to the territory of the United States.

But it would be a mistake to think that the increase in the public domain has been coextensive with the increase in territory. We must distinguish between ownership and dominion. It was only that part of the lands within the territory acquired which had not passed into private ownership at the time of acquisition that became the property of the United States. Private rights have been carefully safeguarded in all the treaties of cession, as well as by the rules of international law.[17] These private claims, secured by grants from the governments of France, Spain, England, and Mexico, embraced in the aggregate several million acres.[18] Moreover, in one instance,

[8] H. B. Adams, *Maryland's Influence upon Land Cessions to the United States*, 33.
[9] *Ibid.*, 36.
[10] *Laws of the United States*, 1: 471, 474.
[11] *Ibid.*, 483.
[12] *Ibid.*, 485.
[13] H. B. Adams, *Maryland's Influence upon Land Cessions to the United States*, 40.
[14] *Reports of Committees*, 24 Congress, 1 session, no. 57, 19, C. S., 293.
[15] *Laws of the United States*, 1: 488.
[16] *Ibid.*
[17] *United States Treaties since July 4, 1776*, 1: 332; 2: 1017; 1: 439; 2: 685, 696; 2: 941; *Statutes at Large*, 30: 750, 1758.
[18] *Reports of Committees, House Reports*, 20 Congress, 2 session, no. 95, 11-20, C. S., 190.

title to the public land did not pass. In the joint resolution for the annexation of Texas it was provided that the state should "retain all the vacant and unappropriated land lying within its limits."

In the joint resolution of 1898 for the annexation of the Hawaiian Islands Congress undertook to devote the entire proceeds from the public land in the new possession, except from such part of the land as might be needed for government uses, to the benefit of the people of the islands for educational and other public uses.[19] The public lands of Porto Rico, with similar exceptions, were granted to the government of the island in 1902.[20] The same year the public land of the Philippines was placed under the control of the government of the islands, to be disposed of for the benefit of their inhabitants.[21]

But after all deductions have been made the United States has been and is one of the largest land owners in the world, and the question of the management and disposition of the public domain continues to be one of the big questions before the federal government.

[19] *Statutes at Large*, 30: 750.
[20] *Ibid.*, 32: 732.
[21] *Ibid.*, 695.

CHAPTER II

FEDERAL LAND GRANTS FOR THE SUPPORT OF SCHOOLS

The evidence stated in a former chapter shows that during colonial times there developed in the New England colonies and particularly in Massachusetts a well-defined policy of making land grants for the support of common schools and the ministry, and that several of the middle and southern colonies made use of public lands for the same purposes. These colonial precedents can be shown to have had some influence on the policy adopted by the Congress of the Confederation. May 7, 1784, a committee, of which Jefferson was chairman, reported a bill "for ascertaining the mode of locating and disposing of lands in the western territory."[1] In its original form this measure made no reservations. At this time, however, no action was taken, and the bill was not heard from until March 4, 1785.[2]

At about this time Elbridge Gerry, one of the representatives in Congress from Massachusetts, sent a copy of the ordinance to Timothy Pickering of the same state, with a request to communicate any suggestions he might wish to make to Rufus King, who was also a Massachusetts man and a member of the committee that had reported the ordinance. In an attempt to trace the origin of federal land grants for the support of common schools this incident deserves mention, for Pickering's response appears to have contained the first suggestion looking toward national land grants for the promotion of elementary education. These are his words: "I observe no provision is made for ministers of the gospel, nor even for schools or academies. The latter might have been brought into view; though after the admission of slavery, it was right to say nothing of Christianity."[3] It is practically certain that Pickering must have had in mind the practice of his own state when he made this suggestion.

The bill was recommitted on March 16 to a committee consisting of one member from each state, King being once more a member.[4] On April 14, when this committee reported, the bill as revised contained the following paragraph: "There shall be reserved the central section of every township, for the maintenance of public schools; and the section immediately adjoining the same to the northward, for the support of religion. The profits arising therefrom in both instances, to be applied for ever according to the will of the majority of male residents of full age within the same."[5] The

[1] *Journals of Congress*, 9: 147.
[2] *Ibid.*, 10: 50.
[3] *Life and Correspondence of Rufus King*, 1: 283-284.
[4] *Journals of Congress*, 10: 58, 87.
[5] *Journals of Congress*, 10: 87, 96.

clause providing for the reservation of a section for the support of religion was stricken out and an amendment making a like reservation for the maintenance of charitable institutions was rejected.[6]

As we are considering the influence of colonial precedents on the action of Congress, it is of interest to notice the attitude of the different states toward this matter in Congress. On the question of a reservation for the support of religion every state that had developed a well-defined policy of devoting public land to this purpose,[7] except North Carolina, voted aye, and North Carolina's vote was evenly divided. The only states that voted no were Rhode Island and Maryland. In both of these states land grants for the support of the ministry were entirely unknown.[8]

When it came to the question of a reservation of land for charitable institutions seven states voted aye; Rhode Island, Pennsylvania, and North Carolina were evenly divided; and New York and Maryland voted no. This, also, is what we might expect. No state accustomed to land grants for this or a similar purpose voted no, and but one state, Delaware, not accustomed to land grants for this or an allied purpose, voted aye.[9]

As finally passed on May 20, 1785, the ordinance provided: "There shall be reserved the lot No. 16, of every township, for the maintenance of public schools, within the said township."[10] As this measure became the model followed in subsequent federal land grants for the promotion of education even the form of the grant is a matter of some importance. It will be noted that the New England plan of making reservations for education not only was adopted by the federal government, but that this plan took the form which it had assumed in New England, namely, a reservation for the support of schools within the little local communities, the townships. It required nearly half a century of disastrous state experience to convince Congress that such minute subdivision of the school funds produced pernicious results.

Pickering's influence in shaping the report of the committee may be surmised from a statement by King in a letter to Pickering shortly afterward: "The best returns in my power to make you for your ingenious communications on the mode of disposing of the western territory, is, to inclose for your examination the form of an ordinance reported to Congress on the subject. You will find thereby, that your ideas have had weight with the committee who reported this ordinance."[11] It therefore appears that it was the men from New England, the home of the land-endowed common school, who

[6] *Ibid.*, 96, 97, 98.
[7] Massachusetts, New Hampshire, Connecticut, Virginia, the Carolinas, and Georgia.
[8] *Journals of Congress*, 10: 97. Pennsylvania and Delaware also voted aye. New York was divided. New Jersey was not represented. The measure failed to pass because it required the vote of seven states to retain it and three of the states voting aye had but one representative, and hence their votes could not be counted.
[9] *Journals of Congress*, 10: 98.
[10] *Ibid.*, 121.
[11] Pickering, *Life of Timothy Pickering*, 1: 511.

were chiefly instrumental in securing the incorporation into the national policy of the system of land grants for the support of elementary education.

In the meantime an organized movement for immigration to the Ohio Valley had been developing in New England. As early as April, 1783, a plan was set on foot among some of the principal officers of the Revolutionary army, among whom were Timothy Pickering and Rufus Putnam, for "forming a new state westward of the Ohio,"[12] and so-called "propositions" were drawn up. After making liberal provision for land grants to the army these "propositions" provided that the land remaining should be "the common property of the State and disposed of for the common good; as for laying out roads, building bridges, erecting public buildings, establishing schools and academies, defraying the expenses of the government, and other public uses."[13] It is interesting to note that no uses were suggested that did not have colonial precedents.

In June of the same year a petition for a grant of land to the army was transmitted to Congress through General Washington. The petition itself contained no reference to reservations for schools. But that such reservations were still in the minds of the leaders is shown by the fact that Rufus Putnam, in a letter to Washington accompanying and explaining the petition, remarked: "The whole tract is supposed to contain about 17,418,240 acres, and will admit of 756 townships of six miles square, allowing to each township 3,040 acres for the ministry, schools, waste lands, rivers, ponds, and highways."[14]

Congress failed to take action upon this petition at the time,[15] but the movement was not defeated. The leaders persisted in their purpose, and when, on January 10, 1786, Rufus Putnam and Benjamin Tupper called a meeting for the purpose of organizing a company for the settlement of the West the suggestion met a very favorable response.[16] The company was organized on March 3,[17] and Rufus Putnam, Samuel Parsons, and Manasseh Cutler, all Connecticut or Massachusetts men, were chosen directors.[18] In the summer of 1787 Cutler was delegated by the company to purchase a large area of western land from Congress.

In the session of 1786 Congress had under consideration a new measure for the government of the Northwest Territory. But it was not pushed.[19] The situation changed, however, when Cutler appeared at Philadelphia in July, 1787, offering to purchase a large tract of land for the Ohio Company.

[12] Pickering to Hodgdon, April 7, 1783, in *Life, Journals, and Correspondence of Manasseh Cutler*, 1: 149.
[13] *Ibid.*, 157.
[14] *Ibid.*, 171.
[15] *Journals of Congress.*
[16] *Life, Journals, and Correspondence of Manasseh Cutler*, 1: 180.
[17] *Ibid.*, 184.
[18] *Ibid.*, 192.
[19] *Journals of Congress*, 11: 97, 100, 146, 166.

The renewed interest in western land hastened the passage of the ordinance[20] and on July 13, 1787, it became a law. In it we read the memorable passage which has meant so much to the cause of education in the states of the Northwest: "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."[21]

It is very probable that Cutler was the man to secure the inclusion in the ordinance of the clause referring to schools and education. This clause did not appear in the measure as it stood when he reached Philadelphia. That he was interested in the matter of land grants for the support of schools and religion is evident, for he insisted upon having reservations for these purposes included in the land purchase which he was negotiating with Congress at this time. Moreover, his diary shows that a copy of the ordinance was sent to him, that he proposed several amendments and that all of these save one were adopted, and that one not pertaining to education.[22]

The Ordinance of 1787 marks the second important step in transforming the New England practice of land grants for education into a federal policy. Here again it seems likely that a man steeped in New England precedents was chiefly instrumental in securing the endorsement of the policy by the national government.

While the Ordinance of 1787 was before Congress for consideration, Cutler was negotiating with that body for the purchase of a tract of land for the Ohio Company. To begin with, Cutler demanded the reservation of one section in each township for the support of common schools, one for the support of the ministry, and four townships for the establishment of a university. Congress considered these reservations too liberal.[23] On July 23, 1787, the matter was compromised by the adoption of the following provisions: "The lot No. 16, in each township or fractional part of a township, to be given perpetually for the purposes contained in the said ordinance [the ordinance of the 20th of May, 1785]. The lot No. 29, in each township or fractional part of a township, to be given perpetually for the purposes of religion. The Lots Nos. 8, 11, and 26, in each township, or fractional part of a township, to be reserved for the future disposition of congress. Not more than two complete townships to be given perpetually for the purposes of a university, to be laid off by the purchaser or purchasers, as near the centre as may be, so that the same shall be of good land, to be applied to the intended object by the legislature of the state."[24]

This represents the third important step toward making land grants

[20] Nathan Dane to Rufus King, July 16, 1787, in *Life and Correspondence of Rufus King*, 1: 289.
[21] *Journals of Congress*, 12: 61.
[22] *Life, Journals, and Correspondence of Manasseh Cutler*, 1: 342-343; 2: 413-417.
[23] Knight, "Land Grants for Education in the Northwest Territory," American Historical Association, *Papers*, 1: no. 3, 16-17.
[24] *Laws of the United States*, 1: 573.

for the support of common schools a national policy. It also marks the first step toward the adoption by the national government of the policy of promoting the development of universities by means of land grants, a policy already followed by most of the states. This question will be considered further in the next chapter.

October 2, 1787, Congress acted favorably on the application of John Symmes for the purchase of a million acres of western lands. The terms were the same as in the sale to the directors of the Ohio Company, except that, at the request of the purchaser,[25] only one township was granted for a university.[26]

The reservations for "religion" in the two great land sales of 1787 are the only ones ever made by the national government. In 1785 it is clear that the representatives of the majority of the states were in favor of such reservations, although not of enough states, under the requirements of the Articles of Confederation, to secure the inclusion of the provision in the ordinance of that year. But the sentiment of the country was swinging away from an established state church. This sentiment found definite expression in the following clause of the first of the ten amendments that became a part of the Constitution in 1790: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Prior to this time seven of the twelve states that had adopted constitutions had prohibited the maintenance of an established church.[27] With the passing of this institution land grants for the support of the ministry became impracticable.

It is therefore clear that land grants for the support of the ministry of an established church failed to find a permanent place in the federal system, not because colonial precedents with respect to this matter did not have any weight, but because the institution that had been the beneficiary of such grants, the state-supported established church, ceased to exist in this country.

The attitude toward the school was just the reverse. It not only remained a public institution, but became more and more firmly established in the American system with each passing year. But whether the federal land grants for this purpose, promised to the Northwest Territory by the Ordinance of 1785, would in fact be given, when the new states to be carved out of that area came to be admitted into the Union, was still an undecided question. There was, perhaps, a moral obligation to live up to the promise of 1785 to donate lands for the support of schools. But

[25] *Ibid.*, 495.
[26] *Ibid.*, 498, 2: 288.
[27] *Delaware Constitution of 1776*, art. 29; *Georgia Constitution of 1777*, art. 56; *Maryland Constitution of 1776*, Declaration of Rights, sec. 33; *New Jersey Constitution of 1776*, sec. 18; *New York Constitution of 1777*, sec. 38; *Pennsylvania Constitution of 1776*, Declaration of Rights, sec. 2; *Vermont Constitution of 1777*, ch. 1, sec. 3.

that was all. There was no legal obligation, no contract. The test of the attitude of the federal government toward the question came in 1802, with the consideration of the measure for the admission of Ohio into the Union.

In connection with the study of the conditions of the federal land grants we shall see how the anxiety of the national government to make its western lands attractive to prospective buyers led to the proposal by Gallatin of temporary exemption from taxation after title had passed to the purchaser. But this requirement called for an equivalent, and that equivalent, in part, took the form of a grant of land for the support of schools. As finally passed the clause referring to the school lands was as follows: "That the section number sixteen, in every township, and where such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township for the use of schools."[28] It should be noted that the grant continues to be a grant, not to the state, but to the townships of the state.

The first federal grant for the schools of a whole state was thus, at least in form, not a gift, but the result of a bargain in which the United States purchased from a state exemption of its lands from taxation for a term of years after they had been sold. With this act land grants for the support of schools may be said to have become firmly established as a national policy.

There were, however, in the state of Ohio, four large groups of land to which the United States did not have title or which had been devoted to other purposes. These were the Connecticut, the Virginia, and the United States Military Reserves, and the Indian lands. With reference to at least a part of these the grant of section sixteen was not operative. But Ohio refused to give its consent to the proposed compact until Congress should provide a grant for the common schools within these areas. The additional grant was made, an area equal to one thirty-sixth of the land in each of the tracts reserved. Thus was established the precedent for granting indemnity lands where section sixteen could not be given.

The form of the grant is significant. It was not for the use of each "township," as in the act of 1802, but to be vested "in the legislature of that state, in trust" for the use of schools within the various tracts.[29] The same act authorized the legislature to manage the township grants. A separate account is kept with each of the three districts referred to above and with each township in the rest of the state. On the books of the state auditor there are eight hundred twenty-three distinct funds held in trust for the benefit of common schools.[30]

The policy of land grants for the support of common schools was soon

[28] *Laws of the United States*, 3: 497-498.
[29] *Ibid.*, 3: 541.
[30] Knight, "Land Grants for Education in the Northwest Territory," American Historical Association, *Papers*, 1: no. 3, 59.

extended to the territory south of the Ohio. March 3, 1803, section sixteen in each township within the present states of Alabama and Mississippi, then Mississippi Territory, was reserved "for the support of schools within the same."[31]

In 1806 the public lands in the southwestern part of the Louisiana Purchase were put on the market subject to the reservation of section sixteen for the use of schools.[32] And so the policy has gradually been extended, from territory to territory, from state to state, until now every state in the Union admitted since 1802 has received a land grant for public schools, except Texas, which retained all of its public lands, and Maine and West Virginia, in which the United States had no lands to give.

But although the policy of making land grants for the support of schools was steadily followed, the conditions of the grant were changed from time to time. These, therefore, call for further study. The features that particularly deserve consideration are four: the time, the amount, and the beneficiaries of the grant, and the extent of national control.

Prior to 1848 there was no definite time when the school lands were reserved. Sometimes the reservation was made before the district was organized as a territory and sometimes after, but seldom at the time of such organization. After 1848 Congress followed the practice of reserving the school lands in the organic act of the territory.[33] During both periods it was customary to make the final grant in the enabling act of the state.[34] The federal government departed from the practice only in the case of Tennessee, Louisiana, Mississippi, and California, all of which received title to their school lands after they had become states, and New Mexico, which received title to a portion of its school lands before it became a state.[35]

As to amount the grants fall into three well-defined periods. From 1802 to 1848 one section in each township was given; from 1848 to 1890, two sections; and from 1894 to 1910, with one exception, four sections.

During the first period fourteen new states were admitted into the Union.[36] In every case but Maine and Texas section sixteen was granted for the use of schools. Maine had been a part of Massachusetts and the United States never owned the public land within its borders. Mention has already been made of the fact that Texas retained all its public lands. This sufficiently explains why these states received no federal grant.

Tennessee is in a class by itself. The territory within the present state was ceded to the federal government by North Carolina in 1790, subject

[31] *Laws of the United States*, 3: 551.
[32] *Ibid.*, 4: 54.
[33] *Statutes at Large*, 9: 330, 408, 452, 458; 10: 179, 283; 12: 176, 214, 243, 314; 13: 91; 15: 183; 26: 89.
[34] *Ibid.*, 11: 167, 270, 383; 13: 32, 34, 49; 25: 679; 26: 215, 223; 28: 109, 209; 36: 572; *Laws of the United States*, 3: 497-498, etc. In the case of Florida a separate act of the same date.
[35] *Statutes at Large*, 30: 484.
[36] Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Maine, Missouri, Michigan, Arkansas, Florida, Iowa, Texas, and Wisconsin.

to the location on agricultural lands within the ceded territory of the bounty land warrants of the North Carolina soldiers, and with the provision that the inhabitants should enjoy all the privileges and advantages set forth in the Ordinance of 1787.[37] In 1796, when the state was admitted into the Union, nothing was said about the public lands.[38] It soon developed that both the state and the nation laid claim to this property, the former contending that by the act admitting her to the Union, with the sovereignty, the ownership of the soil passed to the state, there being no reservation of that right by Congress.[39]

The matter was compromised in 1806 by the relinquishment on the part of the United States of its claim to the public land north and east of a certain line, known as the "congressional reservation line," on the condition that the state give up its claim to the land west and south of this line. Congress also required that in making grants and perfecting titles, for every six square miles of land in the territory ceded Tennessee should locate six hundred forty acres for the use of schools, wherever existing claims would allow this to be done.[40] Similar provision was made for seminaries of learning, a matter which will receive further consideration in the next chapter. The military bounty warrants were to be located east of the congressional reservation line; but, in case there should not be enough land in the ceded territory to meet all legal claims, Congress undertook to supply the deficiency from the land west of the line.[41]

Vast areas of land in Tennessee were found to be almost worthless. The claims set forth above aggregated millions of acres. The result was that the agricultural land east of the line of division proved to be utterly insufficient. More than three million acres of military warrants had to be located west of the line. Even then the state was enabled to appropriate only 24,000 acres for the support of common schools in the eastern division. West of the congressional line there were no reservations for this purpose. This left the state with only 24,000 acres of school lands, while if the same provision had been made for her as for the states of the Northwest Territory, which Tennessee insisted was her due under the act of cession of North Carolina, she would have received two thirds of a million. To satisfy this claim the state asked the federal government to cede the vacant land west of the congressional reservation line. During the thirties the house committee on public lands repeatedly recommended such a cession.[42] The Senate passed a bill for this purpose in 1839,[43] but the House failed to act.

Finally, in 1841, Congress made the state of Tennessee its agent for the

[37] *Laws of the United States*, 2: 85-89.
[38] *Ibid.*, 567.
[39] *Reports of House Committees*, 24 Congress, 1 session, no. 57, C. S., 293.
[40] *Laws of the United States*, 4: 39-40.
[41] *Ibid.*, 41.
[42] *Reports of House Committees*, 24 Congress, 1 session, no. 57, C. S., 293.

sale of its lands in the western division of the state, the minimum price being fixed at twelve and a half cents an acre. The proceeds were to be turned into the federal treasury.[44] Five years later the lands still unsold were granted to the state together with such part of the proceeds of the lands disposed of as had not already been turned over to the federal government. There was one condition. Out of the proceeds the state must set apart $40,000 toward the establishment and maintenance of a college at Jackson.[45]

The first mention in Congress of a larger grant for the support of schools appears to have come in 1846, when John A. Rockwell, of Connecticut, introduced a bill "to appropriate an additional section in each township of the public lands of the United States, in support of common schools."[46] This measure never got back to Congress from the committee on public lands, to which it was referred. But there was a growing feeling that the pioneer settlers in the new states ought to receive further encouragement in developing a system of common schools. The commissioner of the general land office recommended further grants of land for that object in his annual report in 1846.[47] The matter once more came before Congress in February, 1848, in connection with the bill for the admission of Wisconsin into the Union. Rockwell now proposed to amend this measure so as to provide for a grant of section thirty-six in addition to section sixteen. But Congress was not yet ready to make the change.[48] Six months later the same Congress, in the act creating Oregon a territory, reserved two sections in each township for the use of schools.[49] In the intense excitement over the question of the exclusion of slavery from the new territory the other features of the bill were not discussed.[50]

The second reservation of two sections for school purposes was made in 1849 in the organic act of Minnesota.[51] In 1853 California, then a state, received a grant of two sections for its public schools.[52] This was the first state to receive such a grant. Minnesota, which received its grant in 1857, was the second.[53] Of the fourteen states admitted into the Union during this period all but West Virginia received sections sixteen and thirty-six for the support of schools. The United States never had title to the public lands of West Virginia.

[43] *Congressional Globe*, 25 Congress, 2 session, 146.
[44] *Laws of the United States*, 10: 93.
[45] *Statutes at Large*, 9: 66.
[46] *Congressional Globe*, 29 Congress, 1 session, 172.
[47] Annual Report Commissioner General Land Office, 1846, *Executive Documents*, 29 Congress, 2 session, no. 9, 6, C. S., 498.
[48] *Congressional Globe*, 30 Congress, 1 session, 749, 753, 754.
[49] *Statutes at Large*, 9: 330. On page 11 of his monograph on "Congressional Grants of Land in Aid of Railroads," University of Wisconsin, *Bulletin*, Mr. Sanborn states that after 1848 the states received "the sixteenth and thirty-second sections" of their public lands. This is not accurate. The states that received only two sections received the sixteenth and the thirty-sixth.
[50] *Congressional Globe*.
[51] *Statutes at Large*, 9: 408.
[52] *Ibid.*, 10: 246.
[53] *Ibid.*, 11: 167. Joseph Shafer seems to have overlooked the grants to California and Minnesota. On page 41 of his monograph, "The Origin of the System of Land Grants for Education," University of Wisconsin, *Bulletin*, History Series, 1, he says: "Oregon, admitted in 1859, was the first state to receive two sections."

The first state to receive more than two sections was Utah. In the enabling act of this state, passed in 1894, the grant for schools was increased to four sections, two, sixteen, thirty-two, and thirty-six.[54] This change was not made with the intention of giving Utah a larger endowment than the other states but because most of the unappropriated lands of the state were arid and of small value. On this account the double grant met very little opposition.[55] For the same reason four sections were granted to Arizona and New Mexico.[56]

Oklahoma, admitted as a state in 1906, received sections sixteen and thirty-six in the region covered by the old territory of that name. But in the Indian Territory the rights of the Indians intervened. In place of a land grant Congress therefore appropriated $5,000,000 to the state for the "benefit of the common schools."[57]

There are four other matters that have affected the amount or the character of the grant of school lands and that therefore appropriately are considered here: fractional townships, reservations of school sections for national purposes, prior claims of private individuals, and the exclusion of mineral lands from the grant.

If often happened that, owing to inaccuracies of the survey, the meeting of surveys, or the presence of lakes and rivers, certain townships had no section sixteen and consequently received no grant of school lands. This was especially unfair as long as the grant remained virtually a grant to townships.

In 1826, recognizing the unfairness of the former system, Congress provided that, for the support of schools in each township or fractional township that had received no school land, grants should be made in the following amounts: "for each township or fractional township, containing a greater quantity of land than three quarters of an entire township, one section; for a fractional township, containing a greater quantity of land than one half, and not more than three quarters of a township, three quarters of a section; for a fractional township, containing a greater quantity of land than one quarter, and not more than one half of a township, one half section; and for a fractional township, containing a greater quantity of land than one entire section, and not more than one quarter of a township, one quarter section of land."

The lands were to be selected by the secretary of the treasury within the land district where the fractional township might be situated.[58] In 1859 like provision was made regarding fractional thirty-sixth sections.[59]

[54] *Ibid.*, 28: 109.
[55] *Congressional Record*, 26: 182, 209, 214.
[56] *Statutes at Large*, 36: 561.
[57] *Ibid.*, 34: 272.
[58] *Laws of the United States*, 7: 490-491.
[59] *Statutes at Large*, 11: 385.

In the earliest grants it was customary to give section sixteen in each township, and, if that section was disposed of, "other lands equivalent thereto." This practice was followed in every case until 1875 and again in 1890 and 1910. The four states admitted in 1889 received the grant subject to the condition that there should be no indemnity for school sections in permanent reservations and that the grant should not be operative as to Indian, military, and other reservations of any character until the reservation should be extinguished and the land restored to the public domain.[60] The same policy was followed in 1894 in the grant to Utah[61] and in 1906 in the grant to Oklahoma.[62] Arizona and New Mexico were allowed to make indemnity selections for all school sections otherwise disposed of. If, however, indemnity selections are not made for school sections in national forests, these states are to receive from the secretary of the treasury at the close of each fiscal year a proportional share of the gross proceeds of all the national forests within their borders.[63]

Even more school sections have been lost to the states because the rights of private individuals have intervened. When the United States became the sovereign, large areas within the public land states were owned by Englishmen, Frenchmen, Spaniards, and Mexicans. Such land often included school sections.

More frequently, however, the claimant has been an American citizen. Long before the western lands became the property of the federal government the tide of westward emigration had rolled over the crests of the Alleghanies and out on the fertile reaches of the empire beyond. And, with the return of peace, the subjugation of the Indians, and the improvement of the means of transportation, this human tide flowed ever stronger. But thousands of these pioneers felt that they were going to a no-man's land, in which occupation and use should give title. In this respect, however, the movement ran counter to the fiscal policy pursued by the federal government, namely, to use the public domain to pay the national debt. As early as 1807 Congress expressly forbade the unauthorized occupation of the public land and gave authority to the president to remove trespassers from the public domain.[64] President Madison and President Jackson issued proclamations warning the intruders off and directed the United States marshals to enforce the order.[65] The United States troops were even used. But the breaking plow proved to be mightier than the bayonet. In the end the government was compelled to compromise with its energetic frontiersmen. The result was the preëmption law, giving to the occupant of the land priority of

[60] *Ibid.*, 25: 679.
[61] *Ibid.*, 28: 109.
[62] *Ibid.*, 34: 272.
[63] *Ibid.*, 36: 562, 573.
[64] *Laws of the United States*, 4: 118.
[65] *Statutes at Large*, 11: pp. xxii, xxvi.

right to purchase his holding at the regular price. For decades these laws were local and temporary in application.[66] But the policy gained ground from year to year, till in 1841 a permanent law nation-wide in scope was enacted by Congress.[67]

Most of these preëmption laws, however, did not include the school lands. The act of 1819, which concerned land titles in Louisiana, was an exception, settlers on public land before the survey being authorized to retain their holdings.[68] Not till 1859 was the policy of the law of 1819 given a general application.[69] The act of 1859 was amended in 1891, but the amending act retains equivalent provisions.[70]

During the entire history of American colonization the settler has led the way and the surveyor has followed. For this reason, although the acts referred to above applied only to settlers who had taken possession before the survey, hundreds of thousands of acres of school lands have been lost to the common schools. In such cases, to be sure, other lands of equal area have been given as an indemnity. These, however, have not constituted an equivalent. The first settlers generally select the most valuable lands.

In the early grants it was not customary for Congress to reserve the mineral lands. Consequently the value of the grants to states like Minnesota, fortunate enough to receive valuable mines, has been out of all proportion to the value of the grants to other states.[71] In 1866 Congress reserved from sale all lands in Nevada valuable for gold, silver, quick-silver, or copper. The school lands had been given to the state in 1864, without reservations, but the state agreed to accept the grant with the mineral lands excluded.[72] Mineral lands have been excluded from all subsequent grants of school land except the grant to Utah in 1894, and to Oklahoma in 1906.

This change in the form of the grant has raised the question as to whether the state's title is always subject to the mineral reservation. The Supreme Court has held that when the proper officer of the federal government has once decided that a tract of land is not mineral, the question is forever closed.[73]

Another reservation of a similar character should be mentioned here. In 1910 Arizona and New Mexico received their land grants subject to the reservation of all land valuable for water or hydro-electric power, such reservation to be made within five years by the secretary of the interior.[74]

According to the "Tables of State Grants of Public Lands," issued by the federal land office March 12, 1896, and brought down to date for Oklahoma,

[66] *Laws of the United States*, 6: 418; 8: 374; 9: 800.
[67] *Ibid.*, 10: 158.
[68] *Ibid.*, 6: 418.
[69] *Statutes at Large*, 11: 385.
[70] *Ibid.*, 26: 796.
[71] Minnesota, *Auditor's Report*, 1911-1912, pp. 6-15.
[72] *Ibid.*, 14: 86; Solomon Heydenfeldt *v.* The Daney Gold and Silver Mining Company, 93 *United States*, 641.
[73] Shaw *v.* Kellogg, 170 *United States*, 332.
[74] *Statutes at Large*, 36: 564.

Arizona, and New Mexico, the states have received grants of school lands as follows:

States Receiving Section No. 16			
Alabama	901,725	Louisiana	798,085
Arkansas	928,057	Michigan	1,003,573
Florida	1,053,653	Mississippi	838,329
Illinois	985,141	Missouri	1,162,137
Indiana	601,049	Ohio	710,610
Iowa	978,578	Wisconsin	958,649
States Receiving Sections Nos. 16 and 36			
California	5,610,702	Nevada	*2,000,000
Colorado	3,715,555	North Dakota	2,531,200
Idaho	3,063,271	Oklahoma	1,413,862
Kansas	2,876,124	Oregon	3,387,520
Minnesota	2,969,991	South Dakota	2,813,511
Montana	5,102,107	Washington	2,488,675
Nebraska	2,637,155	Wyoming	3,368,924
States Receiving Sections Nos. 2, 16, 32, and 36			
Arizona	8,035,000	Utah	6,007,182
New Mexico	8,464,000		
		Total	77,404,365

Up to 1845 the school lands were generally granted "to the state for the use of the inhabitants" of each "township for the use of schools."[75] But in the case of Indiana and Alabama the grant was directly to the "inhabitants" of the various townships.[76] The results were equally disastrous, for in either case it meant local control over the proceeds of the lands. It was certainly a fortunate thing for education in this country that the New England system of land grants became a part of the federal system, but it was most unfortunate that Congress should blindly follow the form of the New England grant long after it had been demonstrated that local control and minute division of the funds were not suited to the new states of the West.

The first case in which the grant was made to the state directly, nothing being said about townships, was the Michigan grant of 1836.[77] This policy was departed from in subsequent grants only in the grant to Florida in 1845.[78] All told there were nine states whose school lands were granted for the use of the townships in which they lay, including Louisiana, Arkansas, and Missouri west of the Mississippi, and all the states east of the Mississippi receiving such grants except Wisconsin, Michigan, and Minnesota.

The legislatures of the new states have not always been discreet and far-sighted in the management of the school lands. The spectacle of state

* Accepted in place of the original grant.
[75] *Laws of the United States*, 6: 294.
[76] *Ibid.*, 68, 382.
[77] *Ibid.*, 9: 395.
[78] *Ibid.*, 10: 767.
[78] *Ibid.*, 10: 767.

after state throwing away the heritage of its common schools by century-long leases, premature sales at inadequate prices, or investment of the proceeds in doubtful securities served more and more to impress upon Congress the importance of taking some action to safeguard the inheritance of the schools. There are four matters in particular pertaining to the school lands over which Congress has sought to exercise a guiding or directing influence. These are the leasing and the sale of the lands, and the protection and use of the proceeds.

The reservation of the school sections within the territories gave them no title to the land. It therefore remained completely subject to national control. In a few cases, however, Congress authorized the territorial authorities to lease the land. This power was generally given to the governor and legislature,[79] but in the case of Mississippi,[80] in 1815, to agents to be appointed by the county courts in the various counties, and in the case of Wyoming, in 1885, to the county commissioners.[81]

Up to 1889, however, no attempt was made to control the action of the states in regard to the matter. In that year, in the enabling act for the states of North Dakota, South Dakota, Montana, and Washington, Congress took an important step in the direction of national control by providing that no lease should run for more than five years or exceed one section for each individual.[82] Both provisions were aimed to protect the school funds against ill-considered action on the part of the state legislatures. The six states admitted since 1889 have all been subjected to similar restrictions.

In 1906 Congress prescribed in detail the manner in which Oklahoma should lease her mineral lands. Such lands can be leased only by public competition after thirty days' published notice specifying a fixed royalty in addition to a bonus for the lease. The bids must be sealed. There can be no transfer of a lease without the written consent of the proper state official. The maximum period for a lease is five years.[83] In 1910, in the enabling act for Arizona and New Mexico, Congress extended this policy to all lands. It was provided that no lease should be made for a longer term than five years except at public auction at the county seat of the county in which most of the land is situated and after ten weeks' notice has been given.[84]

Up to 1875 no grant of land for school purposes contained a specific restriction on the right to sell. But some of the states that had received their school lands in trust for the various townships were uncertain whether they possessed this right. At the request of these states[85] Congress gave

[79] *Ibid.*, 7: 534; 8: 136; 8: 176; 29: 90.
[80] *Ibid.*, 4: 740.
[81] *Statutes at Large*, 25: 393.
[82] *Ibid.*, 679-680.
[83] *Ibid.*, 34: 273.
[84] *Ibid.*, 36: 563, 574.
[85] *American State Papers, Public Lands*, 4: 50, 890, 891, 957; 5: 603.

the desired authority, but with the proviso that the consent of the various townships should first be secured and that the proceeds arising from this fund should be distributed to the townships in proportion to the amount received from the sale of their lands.[86]

With the enabling act of Colorado in 1875 Congress for the first time in a grant of school lands imposed an express restriction on the power of sale. A public sale with a minimum price of two and a half dollars an acre was required.[87] All the states admitted since that time, except Utah, have been subjected to some restriction as to the mode of disposing of their land. The six that entered the Union in 1889 and 1890, like Colorado, were required to sell their school lands at public sales. The minimum price per acre was fixed at ten dollars.[88] In the enabling act of Oklahoma there was substituted for the requirement of a minimum price a provision for the appraisal of the land by disinterested persons not residents of the county in which the land is located. No bid for less than the appraised value can be accepted and no mineral lands can be sold before January 1, 1915.[89] Arizona and New Mexico were subjected to requirements fixing the notice to be given, and the place and manner of sale. The minimum price was put at three dollars per acre for the more arid land west of a certain meridian in New Mexico, five dollars for land east of this meridian, and twenty-five dollars for land capable of irrigation under the statutes of Congress. It was also provided that no mortgage or incumbrance of state land should be valid under any circumstances and that credit should not be given without ample security. In case of sale, legal title does not pass from the state until the purchase price has been paid in full.[90]

We have seen that prior to 1836 the school lands were granted either directly to the townships or to the state for the use of the townships. This form of grant in itself was a very important limitation on the power of the state. In many cases Congress has specifically required that the proceeds of the school lands should go to the various townships.[91] The result has been either separate funds with local management, as in Louisiana,[92] Missouri,[93] Illinois,[94] and Mississippi,[95] obviously an unfair and unsafe system; or, as in Indiana,[96] Ohio,[97] and Alabama,[98] a single fund, managed by the state, but with the proceeds distributed to the townships, not pro rata, but according to the returns brought by their land, a system equally unfair and

[86] *Laws of the United States*, 7: 434, 587; 8: 108; 10: 432. Ohio was authorized to sell in 1826, Alabama in 1827, Indiana in 1828, and Illinois, Arkansas, Louisiana, and Tennessee in 1843.
[87] *Statutes at Large*, 18: 476.
[88] *Ibid.*, 25: 679; 26: 216-217, 223-224.
[89] *Ibid.*, 34: 273-274.
[90] *Ibid.*, 36: 563-564, 574-575.
[91] *Ibid.*, 7: 434, 587; 8: 108; 10: 432.
[92] Swift, *Public Permanent Common School Funds in the United States*, 281.
[93] *Ibid.*, 321-323.
[94] *Ibid.*, 257.
[95] *Ibid.*, 327.
[96] *Ibid.*, 261.
[97] *Ibid.*, 368.
[98] *Ibid.*, 210.

unnecessarily complicated. Only two of the nine states that received their school land for their townships consolidated the proceeds as a single fund: Florida,[99] in 1848, after her townships had been given an opportunity, but had failed to organize to care for the lands, and Arkansas,[100] in 1899, after receiving special authority from Congress.[101] The income is distributed to the counties on the basis of school population or average attendance.

The limitation considered, however, was not a restriction on the state in regard to the purpose for which the common school fund should be applied, but only in regard to the manner of distribution. Such a limitation, however, in a general way, was contained in the provision that the lands should be for the use of "schools," "common schools," or "public schools." Further than this Congress did not go until 1889, when it required of North Dakota, South Dakota, Montana, and Washington, that the schools receiving the benefit of the fund should always remain under state control, and that no part of the fund should be devoted to the support of denominational schools.[102] Equivalent conditions were imposed upon Idaho,[103] Wyoming,[104] Utah,[105] Oklahoma,[106] Arizona, and New Mexico.[107]

The early land grants made no provision for the permanence of the school funds. It was left to the states or to the local divisions to determine whether the principal as well as the proceeds should go to the support of the schools; and unfortunately most of the early states have long ago exhausted all or a large portion of their endowment. Not till 1875 did Congress learn wisdom from the mistakes of its beneficiaries. In the grant of that year to Colorado it provided that the proceeds derived from the sale of the school lands should constitute a permanent fund, only the interest of which might be used for the support of schools.[108] Every state subsequently admitted is subject to the same limitation.[109]

In the enabling act of Dakota, Montana, and Washington, Congress for the first time inserted a provision as to the mode of investment of the school funds. The requirement, however, was merely to the effect that the funds should be "safely invested."[110] In such a general form it was not of much value. The next step in the direction of national control was taken in 1910, by requiring the school funds, as well as the other land funds of Arizona and New Mexico, to be invested by the state treasurer in safe interest-bearing securities approved by two state officers, the governor and the secretary of

[99] *Ibid.*, 244.
[100] *Ibid.*, 220.
[101] *Statutes at Large*, 30: 262.
[102] *Ibid.*, 25: 680.
[103] *Ibid.*, 26: 216.
[104] *Ibid.*, 223.
[105] *Ibid.*, 28: 110.
[106] *Ibid.*, 34: 273.
[107] *Ibid.*, 30: 485; 36: 563, 574.
[108] *Ibid.*, 18. 476.
[109] *Ibid.*, 25: 680; 26: 216, 223; 28: 110; 34: 274; 36: 563, 573-574.
[110] *Ibid.*, 25: 680.

state, and by requiring the state treasurer to provide "sufficient bonds conditioned for the faithful performance of his duties."[111]

It must now be apparent that in all of the matters considered above progress has been in the direction of greater national control over the school lands, particularly during the last four decades. The question immediately arises, what has the federal government done to enforce its requirements? And the answer is, nothing. Many a state has diverted the proceeds of its lands from their purpose, but Congress has taken no action. Indeed, it is only the last enabling act that contains a provision looking toward the enforcement of the requirements. That measure makes it the duty of the attorney general of the United States to enforce the provisions of the act pertaining to the disposition of the lands and the proceeds thereof.[112] This is a very significant requirement. It may compel the Supreme Court to settle the much-mooted question as to the power of the United States to enforce conditions of this character. One thing is certain; it can not take back the land even if some condition is violated. These grants are not grants upon condition in the technical sense in which the common law uses the term, that is, in the sense that actual title does not pass.[113] This being so, it is very difficult to see what the national government could do in the event that a state should fail to live up to its agreement.

This does not mean, however, that these conditions are without substantial effect. Coupled as they are with a donation they carry a moral weight that must have some influence. But here is the really significant point. The more important requirements are generally incorporated in the first state constitutions and thus unquestionably become binding upon the state government.

[111] *Ibid.*, 36: 564, 575.
[112] *Ibid.*, 564-565, 575.
[113] Schneider *v.* Hutchinson, 35 *Oregon*, 253, 258.

CHAPTER III

FEDERAL LAND GRANTS FOR THE SUPPORT OF UNIVERSITIES

We have noted that at the time when the early American statesmen were shaping the policy of the national government in regard to the support of higher education, Virginia, Georgia, Maryland, Pennsylvania, New York, Vermont, and New Hampshire had recently entered upon a policy of land grants for the support of colleges and universities, while in Massachusetts and Connecticut this system was century-old and thoroughly established.

A delegate from one of these states first suggested to Congress the expediency of reserving part of the western lands for the support of higher education. In 1783, in moving the acceptance by Congress of the cession of lands by Virginia, Colonel Bland of that state proposed that out of every one hundred thousand acres there should be reserved for the use of the United States ten thousand, the profits of which should be devoted to the payment of the civil list of the United States, the erection of frontier forts, the founding of seminaries of learning, and the surplus, if any, to the building and equipping of a navy.[1] It is worthy of remark that Virginia had used public land for all of these purposes except the last. The exact attitude of Congress toward this proposition we have no means of determining, for the matter was referred to a committee and never came to a vote.[2]

But this we may say with certainty: there was in Congress at this time no general interest in the matter of federal land grants for the support of higher education, for when the Ordinance of 1785 was under consideration and land reservations for various purposes were proposed, no man suggested that public land should be devoted to the encouragement of universities. The influence which was to establish this policy came, not from within the national legislature, but from without. In the preceding chapter reference was made to the organization of the Ohio Company. The promoters of the new movement were interested in the western lands, not merely as a profitable investment, but as a home for themselves and their children, for many of them were planning to remove to the newer New England west

[1] Bancroft, *History of the Formation of the Constitution of the United States*, appendix, 312-313; *Journals of Congress*, 8: 199. George Bancroft, on page 312 of the appendix of the work referred to, states that Bland's motion was made on June fifth. This is evidently not the correct date, for in the *Journals of Congress* for June 4, 1783, vol. 8: p. 199, there appears the following statement: "The committee, ... to whom was referred a motion of Mr. Bland for accepting the cession of territory made by the legislature of the commonwealth of Virginia . . . . report, etc."

[2] *Journals of Congress*, 8: 199.

of the Alleghanies. Many of them were college-bred men. They were about to place a barrier between themselves and the cultural advantages of the East. Under the circumstances we should expect them to seek to acquire the means wherewith to create new centers of culture within reach of their prospective homes. Moreover, they knew that the venture on which they were embarking would be successful from the financial point of view just to the extent to which they could make the new region attractive to possible emigrants from the northern states, men to whom educational advantages would be certain to appeal.

Of the three directors, Rufus Putnam, Samuel Parsons, and Manasseh Cutler,[3] the first had been a member of the Massachusetts legislature when it added to the land endowment of Harvard University; the second was a graduate of this very University; and all were residents of one or the other of the two states that for a long time had followed the policy of making land grants for the support of their great educational institutions.

Only one of these men, however, appears to have taken an active part in securing a land grant for a university as a condition of the purchase which the company was negotiating. In connection with the study of the school lands we have seen how Manasseh Cutler, as agent of the Ohio Company in the purchase of land from Congress, demanded the donation of four townships within the area to be purchased, for the support of a university, and, finally, after meeting a great deal of opposition, succeeded in wringing from Congress a grant of half this amount.

If we may trust the memory of the central figure in this transaction when, in a letter to his son thirty-one years later, he comments upon the part he bore at the time of the application to Congress for the purchase, it was Cutler alone who had "an idea of asking for such grants." His assistant in the negotiation, however, Sargent, another man trained at the land-endowed university of Massachusetts, is given credit for having extended his cordial aid in surmounting the difficulties in the way.[4]

As noted in a former chapter, this was the first step toward the inauguration of a federal policy of granting lands for the support of universities. While the immediate reason for the grant was the insistent demand of Cutler and the pressing financial necessities of Congress, of which he took advantage in driving his bargain, surely we may say that back of these immediate circumstances, suggesting the plan to Cutler and making it seem not altogether new and revolutionary to the members of Congress, was the almost universal prevalence of land grants for some purpose, as well as the dedication of public land to this particular purpose by the majority of the states.

The second grant of United States land for the promotion of higher

[3] Cutler, *Life, Journals, and Correspondence of Manasseh Cutler*, 1: 191-192.
[4] *Ibid.*, 2: 321.

education was made a few weeks later in connection with the sale of a large tract of land to John Symmes. The same conditions as had been given to Cutler and Sargent were asked and allowed, except that only one township was granted for the support of a university.[5]

Both of these were grants not to the land companies, but in effect to the future state, it being especially provided that they were "to be applied to the intended object by the legislature of the state."[6] As both the Ohio Company's purchase and the Symmes purchase were within the limits of the state of Ohio that state fell heir to three townships of university land. The two contracted for by Cutler were selected in 1795.[7] The third was definitely secured in 1803 by a grant which took the place of the one in the Symmes purchase.[8]

So far, however, there was nothing to indicate that Congress had adopted the university land grant as a part of its policy. The incidents mentioned above were merely the carrying-out of the contracts to which it had become a more or less unwilling party in 1787. But at the opening of the next century a step was taken which showed that Congress looked upon these grants as precedents. In 1804 the secretary of the treasury was directed to locate a township of land for the use of a seminary of learning in each of the three land districts of the then territory of Indiana, which included the entire Northwest Territory, except the state of Ohio.[9] So far as we can learn from the incomplete records of this period the measure met no opposition in Congress.[10] The reserved townships ultimately went to the states of Indiana, Illinois, and Michigan.

From this time on land grants for the support of universities can be looked upon as part of the federal land grant policy. Every public land state admitted after this time has received a grant for the use of a "seminary of learning" or a "state university."

It is proper at this point to consider the unique case of Tennessee. By the act of 1806, more fully examined in the foregoing chapter, Congress required Tennessee to set apart 100,000 acres in one tract for the use of two colleges, one in east and one in west Tennessee, and 100,000 acres for the use of academies, one in each county in the state.[11] Forty years later, when the lands in the western division were ceded to the state, the condition was that $40,000 out of the proceeds should be set apart for a college at Jackson.[12]

In the further consideration of these land grants special attention will be paid to the following matters: the time and the amount of the grant, the selection of the lands, and the extent of national control.

[5] *Laws of the United States*, 1: 498; 2: 288.
[6] *Ibid.*, 1: 573.
[7] Knight, *Land Grants for Education in the Northwest Territory*, 117.
[8] *Laws of the United States*, 3: 542-543.
[9] *Ibid.*, 3: 598.
[10] *Annals of Congress*, 8 Congress, 1 session.
[11] *Laws of the United States*, 4: 40.
[12] *Statutes at Large*, 9: 66.

Unwilling to entrust the territorial legislatures with the disposal of the university lands Congress has not, as a rule, granted such lands to territories. It has, however, been anxious to see the universities of the future states secure good lands and has therefore resorted to the same expedient as in the case of the school lands, reservation before the best tracts had been disposed of by sale or private entry, followed by transfer of title at a later period. This practice has been departed form in only five cases, California, Kansas, Nebraska, Nevada, and Colorado. The first of these, a full-fledged commonwealth clamoring for admission to the Union before Congress had had time to say that it might be a territory, called for a grant of university lands and not for a reservation; the other four were perhaps forgotten in the turmoil of civil war and reconstruction. In nearly every instance the reservations have been made before the territory became a state.[13]

Only five times has Congress granted university lands to territories. In 1836 the territory of Florida was authorized to sell one-half of the land reserved for a university.[14] In 1850 Congress granted two townships to the territory of Oregon, which then also included the present state of Washington.[15] This was perhaps an oversight, for four years later Congress changed the grant to a reservation.[16] It is almost needless to say that this could not alter the character of the original grant. In 1881 two townships were granted to each of the following territories: Dakota, Montana, Idaho, Wyoming, and Arizona. This act certainly transferred title to the university lands to these territories. The intention, however, was not to make the grant immediately available, for it was provided that the lands should be for the use of the universities upon the admission of the territories to the Union.[17] In 1898 two townships reserved in 1854, sixty-five thousand acres of non-mineral land, and all the saline lands in New Mexico were granted to the territory for the use of a university.[18] Ohio also secured title to the university lands while still a territory. The circumstances have been explained above.

The enabling act or the act admitting to the Union has been chosen as the proper measure in which to transfer or confirm title to the university land. Only Louisiana,[19] California,[20] and Nevada[21] have had to wait for their first grant until after their admission. Several states, however, have received additional grants at a later period.

The two townships of land reserved "for the purposes of a university" in the tract sold to the Ohio Company in 1787 became the precedent that

[13] *Laws of the United States; Statutes at Large.*
[14] *Laws of the United States*, 9: 433.
[15] *Statutes at Large*, 9: 499.
[16] *Ibid.*, 10: 305.
[17] *Ibid.*, 21: 326.
[18] *Ibid.*, 30: 484-485.
[19] *Laws of the United States*, 7: 605-606; *House Miscellaneous Documents*, 13 Congress, 2 session, no. 18, 3-4, C. S., 544.
[20] *Statutes at Large*, 10: 248.
[21] *Ibid.*, 14: 85.

was followed in determining the amount of subsequent grants to the states. Many states, to be sure, have received additional grants, but in every case there has been a reason for departing from the rule.

It is also proper to mention that in 1819 certain members of Congress sought to secure for each state in the Union a grant of 100,000 acres for university purposes. But the committee on public lands vigorously opposed the measure, on the ground that the lands would all have to be located in western states, that settlement might be impeded by the withholding of the land from sale, and that the value of the public lands might be diminished.[22]

Taking the states up for consideration in the order of their admission to the Union we find that Ohio received three townships, the three granted for university purposes in the two great land sales of 1787. Louisiana received two townships. Indiana received two townships at its admission to the Union. In 1806 one of these was given by the territorial legislature to Vincennes University and 4,166 acres of this township were sold. The remainder was taken away from the first grantee in 1822 and given by the legislature to the State Seminary at Bloomington, which later became the University of Indiana. In 1845 the trustees of Vincennes University laid claim to the unsold lands and to the funds derived by the state from the lands sold. In order to protect the occupants of the land from litigation the state permitted itself to be sued. After many years the matter was settled by the Supreme Court of the United States in favor of Vincennes University.[23] In the meantime Congress, in response to the appeals of Indiana, came to the assistance of the state university, first, by granting to the state for its use 4,166 acres to take the place of the lands sold by Vincennes University;[24] and, second, by the grant of a township, when the Supreme Court decided adversely to the interests of the state institution.[25] Indiana has thus received three townships and an extra 4,166 acres for university purposes. In addition Vincennes University received a grant of several thousand acres in 1873.[26]

The next state, Mississippi, presents an unusual situation. While it was still a territory Congress granted a township of land to Jefferson College, a private institution of learning located in Mississippi.[27] The township selected fell within the territory of Alabama when the territory of Mississippi was divided. In 1819, however, when Congress made its grant of university lands to Mississippi, it looked upon the township granted to Jefferson College as a grant to the state and, consequently, gave but one additional township.[28] This condition of affairs was called to the attention

[22] *State Papers*, 2 Congress, 13 session, no. 97, C. S., 22.
[23] Indiana *v.* Trustees of Vincennes University, 14 *Howard*, 268.
[24] *Statutes at Large*, 10: 14.
[25] *Ibid.*, 267.
[26] *Ibid.*, 17: 614.
[27] *Laws of the United States*, 3: 551-552; 4: 377-378.
[28] *Ibid.*, 6: 374.

of Congress in 1894, whereupon a second township was secured without opposition.[29] The next year a township was granted for the use of the Mississippi Industrial Institute and College for Girls.[30] Illinois has received but two townships.[31] Alabama has received four, the usual grant and two additional townships.[32] In 1865, during military operations at Tuscaloosa, Alabama, the university buildings and apparatus to the value of $240,000 were destroyed by fire. The second grant, which was made in 1884, was but a tardy reimbursement for the loss occasioned by the war.[33] Two grants of 1899, of twenty-five thousand acres each, to the Tuskegee Normal and Industrial Institute and the Industrial School for Girls, should also be mentioned here.[34]

The next four states received the usual grant.[35] Florida received four townships, but was required to divide the fund between two universities, one to be located east and the other west of the Suwannee River.[36] There were men in Congress at this time who claimed that good faith to Spain required that Florida should be admitted as two states, East Florida and West Florida, and who looked forward to the division of the state.[37] This may have been a factor in determining the form and amount of the university grant.

Wisconsin received the usual grants in its enabling act. But, instead of selecting the seventy-two sections of salt spring lands which had been granted, it petitioned for a grant of the same amount for its university.[38] This petition was granted in 1854.[39] The University of Wisconsin thus came to have a land endowment of twice the usual amount.

California received two townships. Minnesota, owing to circumstances which are fully explained in a subsequent chapter, received four townships.[40] The five states admitted during the period from 1861 to 1890 received the usual grant.

With the admission of North and South Dakota, Montana, and Washington, in 1889, Congress entered upon a new policy. Instead of continuing the grant of salt spring, swamp, and internal improvement lands, grants were made for the support of specified state institutions.[41] In most cases this has meant a second university grant. In addition to the usual grant, North and South Dakota each received 40,000 acres for the support of a

[29] *Congressional Record*, 26: 2731-2732, 6026-6027.
[30] *Statutes at Large*, 28: 815.
[31] *Laws of the United States*, 6: 295.
[32] *Statutes at Large*, 23: 12.
[33] *House Reports*, 48 Congress, 1 session 3, no. 931, C. S. 2255.
[34] *Statutes at Large*, 30: 837.
[35] Missouri, Arkansas, Michigan, Iowa. *Laws of the United States*, 6: 458; 9: 394, 395; 10: 770.
[36] *Laws of the United States*, 10: 767.
[37] *Congressional Globe*, 14: 274-275, 285. The language of the treaty of cession does not bear out this contention. "Treaty of 1819," sec. 5, *Laws of the United States*, 6: 618.
[38] Knight, "Land Grants for Education in the Northwest Territory," American Historical Association, *Papers*, 1: no. 3, 147.
[39] *Statutes at Large*, 10: 598.
[40] *Ibid.*, 11: 166; 12: 208; 16: 196.
[41] *Congressional Globe*, 14: 285.

university and 40,000 acres for a school of mines;[42] Montana, 100,000 acres for a school of mines;[43] Washington, 100,000 acres for a scientific school;[44] Idaho, 50,000 acres for the state university and 100,000 for a scientific school;[45] Utah, 110,000 acres for a university and 100,000 for a school of mines.[46]

Oklahoma is the only public land state that has not received the usual grant of two townships for a university. But it received an equivalent by the grant of section thirteen in certain Indian reservations and in all other lands opened to settlement after the admission of the state. The proceeds were to be divided, one third to the university, one third to the Agricultural and Mechanical College and the Colored Agricultural Normal University, and one third to normal schools. This grant amounted to 353,384 acres.[47] In addition, as part of the grant in lieu of the internal improvement and swamp land grants, the university received 250,000 acres; the University Preparatory School, 150,000; the Agricultural and Mechanical College, 250,000; the Colored Agricultural Normal University, 100,000; and the normal schools, 300,000.[48]

New Mexico and Arizona each received an additional university grant of 200,000 acres, 150,000 for a school of mines, and 100,000 for a military institute, or the equivalent of nearly twenty-two townships for institutions of higher education.[49] Among the educational grants to these states should also be mentioned a normal school grant of 200,000 acres. In addition to this liberal endowment New Mexico, in 1898, had received for its university 65,000 acres of land and also all the saline lands in the state. The latter grant, however, was withdrawn in 1910, except as to the lands that had been selected and approved. These two grants amounted to 109,598.55 acres.[50]

It may also be worth while to mention that the University of California has received about twenty-five hundred acres of land at the summit of Mount Hamilton as a site for its world-renowned observatory,[51] and the University of Montana a site for its observatory.[52] The University of Utah received its campus from the federal government[53] and the Military Reservation at Baton Rouge was given to the University of Louisiana to extend its university grounds.[54]

In addition to the large grants to Jefferson College and Vincennes University there have been a few grants to other private institutions, which it

[42] *Statutes at Large*, 25: 681.
[43] *Ibid.*
[44] *Ibid.*
[45] *Ibid.*, 26: 217.
[46] *Ibid.*, 28: 110.
[47] *Ibid.*, 34: 273; Letter to the author from Jno. R. Williams, secretary of the commissioners of the land office of Oklahoma.
[48] *Ibid.*, 275.
[49] *Ibid.*, 36: 562-563, 573.
[50] *Ibid.*, 30: 485; *Thirteenth Annual Report of the Commissioner of Public Lands of New Mexico*, 8.
[51] *Ibid.*, 19: 57; 27: 11.
[52] *Ibid.*, 33: 64.
[53] *Ibid.*, 28: 118; 34: 196.
[54] *Ibid.*, 32: 172.

may be proper to refer to. In 1828 the trustees of Lafayette Academy in Alabama received a grant of three fourths of a section.[55] In 1832 Columbian College,[56] a Baptist institution located at Washington, received lots in the city to the value of $25,000.[57] The next year a like grant was made to Georgetown College, a Jesuit school in the same city.[58] In 1861 the trustees of Bluemount College, in Kansas, were allowed to "enter" a quarter-section for the benefit of the college.[59]

The total amount of the regular university grants is less than two million acres.

The school lands being designated as particular sections in each township were located the moment the grant was made, if the land was then surveyed; if not, as soon as the United States surveyor had run his lines. The university lands had to be selected by some public official.

Congress has not often entrusted the selection of university lands to a territorial legislature or territorial officers. Prior to 1848, whenever a territory was the beneficiary of a grant or reservation, the duty of selecting the land was given to the secretary of the treasury or the president.[60] After the creation of the department of the interior this duty has fallen to the secretary of that department.[61]

Up to 1827, even when a state was the beneficiary, the duty of selecting the lands was left to federal officials.[62] From that time until 1853 the states that entered the Union as a rule merely received title to land previously reserved by federal authorities. Accordingly, there were no lands to be selected. After 1853 the selection of such university lands as had not been located during the territorial period has been left to state officials in every case. For the states that received their grants during the period from 1850 to 1861, California, Minnesota, Oregon, and Kansas,[63] the governor was the official chosen to do this work. After 1861 the legislature was generally named.[64] In 1910, in the enabling act for Arizona and New Mexico, the governor, surveyor general, and attorney general were designated.[65]

Beginning with the township as the smallest tract that might be selected, the unit has by successive steps been decreased to four sections,[66] two sections,[67] one section,[68] one quarter-section,[69] and finally one sixteenth section,[70] the smallest unit regularly indicated by the United States survey. The

[55] *Laws of the United States*, 8: 149.
[56] Now a college of George Washington University.
[57] *Laws of the United States*, 8: 713.
[58] *Ibid.*, 832.
[59] *Statutes at Large*, 12, Private Laws, 59.
[60] *Laws of the United States*, 6: 69; 7: 605-606; 10: 75.
[61] *Statutes at Large*, 26: 224.
[62] *Laws of the United States*, 6: 69, 295, 374, 383, 458; 7: 531-532.
[63] *Statutes at Large*, 10: 248; 11: 167, 383; 12: 127.
[64] *Ibid.*, 13: 49; 18: 475; 25: 680; 26: 217, 224.
[65] *Ibid.*, 36: 565, 575.
[66] *Laws of the United States*, 6: 374.
[67] *Ibid.*, 383.
[68] *Ibid.*, 7: 584.
[69] *Statutes at Large*, 10: 248.
[70] *Ibid.*, 14: 86.

reduction in the size of the unit has made it possible to select lands of a higher grade. The value of the grants has thus been materially increased.

Prior to 1888 Congress paid very little attention to the leasing of university lands. The territories, as a rule, were not given authority to lease, and the control of the states over the matter was not interfered with.[71]

In 1888 the governor, the superintendent of public instruction, and the auditor of the territory of Wyoming were authorized to act as a board to lease the university lands. The maximum time was fixed at five years. All leases were to expire six months after the admission of the territory into the Union and were subject to annulment by the secretary of the interior.[72] Upon the admission of the territory two years later Congress required this arrangement, so far as applicable, to be continued.[73]

All of the states admitted since 1888 have been subjected to national control in regard to the manner of leasing university lands and the conditions of the lease. This matter, however, need not detain us further, for the conditions imposed have been practically the same as the conditions with reference to the leasing of school lands, discussed in a former chapter.[74] Oklahoma and New Mexico were authorized to lease their university lands before reaching the position of statehood.[75]

The first restriction on the manner of selling university lands appeared in an act of 1835, authorizing the trustees of the University of Michigan to sell a small tract of land near the city of Toledo, Ohio. The sale was required to be made at public auction and after sixty days' notice in three of the newspapers of the territory.[76]

This tract of land has a remarkable history. Two of the sections reserved in 1827 for the University of Michigan are now in the heart of the city of Toledo, Ohio. The lands were even then very valuable and many attempts to purchase them were made by speculators. In 1830 Congress gave the trustees authority to exchange these lands for certain other lands owned by private individuals,[77] and the most valuable half of them were exchanged for a larger tract. In 1835 Congress was again called upon to give special authority, this time for the sale of the latter tract, and responded with the act referred to in the paragraph above. The sale was made in due time and brought five thousand dollars. The original selection was then worth half a million. The two transactions, which were made possible by the special authorization from Congress, cost the University of Michigan $495,000.[78]

[71] Florida is an exception. In 1827 the governor and legislature of the territory were authorized to lease the university lands from year to year. *Laws of the United States*, 7: 534.
[72] *Statutes at Large*, 25: 393.
[73] *Ibid.*, 26: 223.
[74] *Ibid.*, 25: 679; 26: 216, 223; 34: 273-274; 36: 563-564, 574.
[75] *Ibid.*, 28: 71; 30: 486.
[76] *Laws of the United States*, 9: 276.
[77] *Ibid.*, 8: 239-240.
[78] Knight, "Land Grants for Education in the Northwest Territory," American Historical Association, *Papers*, 1: no. 3, 137.

In 1866 Congress for the first time imposed a condition on a state in regard to the sale of the university lands, Nevada being required to dispose of the lands in tracts of not over three hundred twenty acres and only to actual settlers and bona fide occupants.[79]

The act of 1881, granting university lands to the territories of Dakota, Montana, Wyoming, Idaho, and Arizona, required the sale to be held at public auction after appraisal by a board appointed by the secretary of the interior. No land could be sold for less than two and a half dollars an acre nor for less than the appraised value, and no more than one tenth of the land could be sold in one year.[80] From this time on Congress has exercised the same control over the sale of university lands as over the sale of school lands.

Up to 1881 Congress provided in each grant that the lands should be for the support of a "seminary," a "university," or a "state university," nothing further being said as to the character of the institution. There was nothing to prevent the state government from turning over the land to a private college. In fact, at least one township of university land was transferred to a private school, Vincennes University, in Indiana. But in 1889 Congress adopted the practice of requiring that the institution benefited should be completely subject to state control, and should not be a denominational school. This condition has been imposed on all of the ten states admitted since that time.[81]

The requirement that the proceeds derived from the sale of university lands shall constitute a permanent fund is a comparatively recent addition to the federal land grant policy. It reflects the experience of the states, the success of institutions with liberal permanent endowments, as well as the tendency of many of the states to use the principal of the fund for current expenses. The grants of the first three decades of the nineteenth century said nothing in regard to the permanence of the resulting fund. An act of 1832 authorizing Jefferson College in Mississippi to sell its university lands provided that the proceeds should constitute a "permanent fund."[82] But this did not become a state fund, for Jefferson College was not a state school.

On the other hand, when Congress in 1836 authorized Florida to sell one of its townships, it specifically provided that the proceeds should be used for the "erection of commodious and durable buildings," and the "purchase of apparatus" and "whatever else" might "be suitable for such university." The remainder, it is true, was to be invested in productive funds, the proceeds of which should be forever devoted to the benefit of the university.[83]

In 1881 an important step was taken in the direction of national control.

[79] *Statutes at Large*, 14: 86.
[80] *Ibid.*, 21: 326.
[81] *Ibid.*, 25: 680; 26: 216, 223; 28: 110; 34: 273; 36: 563, 573-574.
[82] *Laws of the United States*, 8: 542.
[83] *Ibid.*, 9: 433.

In the grant of that year to five territories for university purposes they were forbidden to use any part of the proceeds, principal or interest, until a fund of $50,000 had accumulated, and then only the interest, until the principal should reach $100,000.[84] It was not till 1889, however, that the entire proceeds from the sale of the university lands were required to be kept intact, a practice which has been followed in all subsequent grants except the grants to Arizona and New Mexico in 1910.[85]

The safeguarding of the university funds was a matter with which Congress did not concern itself until 1881. In that year, when the national legislature departed from its traditional policy of not entrusting territorial governments with the sale of university lands, it required that the proceeds should be invested in United States bonds and deposited with the treasurer of the United States. But when the territories receiving these grants became members of the Union in 1889 and 1890, Congress allowed them to select their own securities and merely specified in a general way that the funds should be safely invested.[86] In subsequent grants Congress has adopted about the same precautions for the safeguarding of the university funds of the new states as for the school funds.[87]

[84] *Statutes at Large*, 21: 326.
[85] *Ibid.*, 25: 680; 26: 216, 223; 28: 95, 109; 34: 273; 36: 557-579.
[86] *Ibid.*, 25: 680; 26: 216, 223.
[87] *Ibid.*, 28: 109; 34: 273; 36: 563-564, 574-575.

CHAPTER IV

THE SALT SPRING LAND GRANTS

Before the Revolutionary War salt springs were discovered in the territory west of the Alleghanies. Their value was quickly recognized, and officers of the French and Indian War, among whom was George Washington, sought to have their bounty lands located so as to include a spring.[1]

When this region came into the possession of the federal government Peletiah Webster, in an essay published in Philadelphia in 1781, suggested that in grants of western lands "all saltlicks, and mines of metallic ores, coals, minerals, and fossils" should be reserved for public use. He added: "A great revenue may grow out of them: and it seems unreasonable that those vast sources of wealth should be engrossed and monopolized by any individuals. I think they ought to be improved to the best public advantage, but in such manner, that the vast profits issuing from them should flow into the public treasury, and thereby inure to the equal advantage of the whole community."[2]

After the war Washington's interest in the salt springs of the West was unabated, but now he saw in them a possible public asset rather than a source of personal gain. In a letter to Richard Henry Lee, the president of Congress, written in December, 1784, he remarked as follows: "Would there be any impropriety, do you think, Sir, in reserving for sale all mines, minerals, and salt springs, in the general grants of land by the United States? The public, instead of the few knowing ones, might in that case receive the benefits, which would proceed from the sale of them."[3] Washington's suggestion met with the approval of the president of Congress[4] and certainly carried weight with that body when it took up for consideration the measure for the disposal of the western lands. Timothy Pickering, of Massachusetts, who was instrumental in securing the reservation of section sixteen for schools, also suggested the reservation of salt licks and salt springs.[5] As finally passed, the Ordinance of 1785 contained a provision for the reservation of one third part of all gold, silver, lead, and copper mines. For some reason, however, which does not appear, the salt springs were not reserved.

But the idea was gaining ground. In 1796 Congress reserved from sale the famous Scioto Salt Spring and the adjoining township, commonly called

[1] Sparks, *Writings of Washington*, 2: 377.
[2] Webster, *Political Essays*, 497.
[3] Sparks, *Writings of Washington*, 9: 81.
[4] Lee, *Memoir of Lee*, 2: 54.
[5] *Life and Correspondence of Rufus King*, 1: 91; Pickering, *Life of Timothy Pickering*, 1: 508.

the Six Miles Reservation. All other salt springs in Ohio and eastern Indiana, together with the section of land contiguous to each, were also reserved.[6] In 1804 these reservations were extended to the rest of the Northwest Territory.[7]

How these reserved areas came to be granted to the state of Ohio has been explained in connection with the study of the school lands. Here it will suffice to say that the Six Miles Reservation, including the Scioto Salt Spring, and the salt springs on the Muskingum and in a tract reserved for bounty lands, known as the Military Tract, with the sections of land including these springs, were granted to Ohio as part consideration for a stipulation by the state not to tax United States land for five years after the day of sale.[8]

Congress had, however, not abandoned the idea of securing revenue from the salt springs. The next year it made an appropriation for the working of a spring on the Wabash, the money to be expended under the direction of the president.[9]

The subsequent grants were generally made without any prior reservation and always at the time of the admission of the state into the Union. The practice was followed until 1875. Of the nineteen public land states admitted during that period only five, Louisiana, Mississippi, Florida, California, and Nevada, did not receive salt spring lands.

The original intention of Congress was not so much to make a grant of land as to make a grant of salt mines, the land being given because necessary to the operation of the mines. This is very clear from the form of the first grants, especially the grant to Indiana in 1816 and to Alabama three years later: "All salt springs within the said Territory, and the land reserved for the use of the same, together with such other lands as may, by the President of the United States, be deemed necessary and proper for working the salt springs."[10]

Precedent has played an important part in determining what land grants should be made to new states, for each has expected to receive at least as much land from the general government as its sister states, and it has seemed fair to Congress not to disappoint the expectation. This is in no case so well exemplified as by the salt springs and salt spring lands, for here it has led to the granting of salt springs to states containing no springs of commercial value, and to the location of springs that had no existence, in order to secure the adjoining lands.

Under the act of 1802, referred to above, Ohio received 24,216 acres of land, or about thirty-eight sections.[11] The next state, Indiana, was limited

[6] *Laws of the United States*, 2: 535.
[7] *Ibid.*, 3: 599.
[8] *Ibid.*, 498.
[9] *Ibid.*, 553.
[10] *Ibid.*, 6: 68, 382.
[11] *Executive Documents*, 33 Congress, 1 session, no. 52, 2, C. S., 721.

to thirty-six sections.[12] The third, Illinois, was given all the salt springs within the state and "the land reserved for the use of the same."[13] This grant brought the state 121,629 acres, more than five times as much as Indiana.[14] Alabama, the fourth state, received thirty-six sections.[15] In 1820, in the enabling act of Missouri, Congress changed the amount of the grant to twelve salt springs, "with six sections of land adjoining each," a total of seventy-two sections.[16] All subsequent grants have followed this precedent.[17]

Fourteen states have received grants of salt spring lands. Of these, ten have received seventy-two sections; two, Indiana and Alabama, thirty-six sections; one, Ohio, about thirty-eight sections; and one, Illinois, about one hundred eighty-nine sections. It is proper to say, also, that in 1854 Wisconsin, included above as receiving seventy-two sections of salt spring lands, was permitted instead to select seventy-two additional sections for its university.[18]

There follows in tabular form a list of the states that have received salt spring lands, with the time and amount of the grant.

States	Area[19]	Time[20]
Ohio	24,216	April 30, 1802
Indiana	23,040	April 19, 1816
Illinois	121,629	April 18, 1818
Alabama	46,080	March 2, 1819
Missouri	23,040	March 6, 1820
Michigan	46,080	June 23, 1836
Arkansas	46,080	June 23, 1836
Iowa	46,080	March 3, 1845
Wisconsin*	46,080	August 6, 1846
Minnesota	46,080	February 26, 1857
Oregon	46,080	February 14, 1859
Kansas	46,080	January 29, 1861
Nebraska	46,080	April 19, 1864
Colorado	46,080	March 3, 1875
Total	652,725	

In 1889 Congress abandoned the policy of granting salt spring lands to the new states, and also the practice of giving swamp lands and internal improvement lands. The salt spring land grant had amounted to 46,040 acres and the internal improvement grant to 500,000. The amount of the

[12] *Laws of the United States*, 6: 68.
[13] *Ibid.*, 294.
[14] *Executive Documents*, 33 Congress, 1 session, C. S., 721, no. 52, 2; *House Miscellaneous Documents*, 30 Congress, 2 session, no. 18, 4, C. S., 544; *House Executive Documents*, 25 Congress, 2 session, 6, no. 136, 13, C. S., 326; Donaldson, in *The Public Domain*, C. S., 2158, 218, incorrectly states the amount to be 121,029 acres.
[15] *Executive Documents*, 33 Congress, 1 session, no. 52, 2, C. S., 721.
[16] *Laws of the United States*, 6: 458.
[17] *Ibid.*, 9: 393-394, 396; 10: 770; *Statutes at Large*, 9: 58; 11: 167, 384; 12: 127; 13: 49, 18: 476.
[18] *Statutes at Large*, 10: 598.
[19] *Laws of the United States; Statutes at Large; Executive Documents*, 33 Congress, 1 session, no. 52, 2, C. S., 721.
[20] *Laws of the United States; Statutes at Large.*
* Permitted to select the same amount for its university in lieu of this grant.

swamp land grant was indefinite, depending upon the area of wet land actually found in the state. In lieu of these three classes of lands the four states which entered the Union in 1889 each received 500,000 acres for the support of specified penal, charitable, and educational institutions, and for public buildings.[21] Idaho and Wyoming, admitted the next year, received the same amount.[22]

Utah came into the Union in 1894 with a grant of 110,000 acres, including all the saline lands in the state, for the use of the state university, and grants aggregating 1,150,000 acres, in lieu of the swamp and internal improvement lands.[23]

Oklahoma in 1906 received 1,050,000 acres in lieu of the three grants omitted.[24] The same year Congress offered to Arizona and New Mexico a grant of 1,800,000 acres in lieu of the swamp, salt spring, and internal improvement lands upon the condition that they should both by popular vote agree to become one state. There was added to this the offer of a money appropriation of five million dollars for the support of common schools.[25] The proposition was rejected.

In 1898 Congress granted to New Mexico the most extensive land grants ever received by a territory. Two townships and all the saline lands in the state were given for the support of a university, 32,000 acres for public buildings, and 100,000 acres for an agricultural college; and 1,100,000 acres were given in lieu of the internal improvement and swamp lands. But the extraordinary circumstance in connection with these grants is the fact that they appear to have been lost sight of in making the subsequent grant to the state. Arizona received no corresponding grant as a territory. Yet, in 1910, when the two territories were admitted to the Union, their land grants were identical. Each received 2,350,000 acres in lieu of the swamp, internal improvement, salt spring, and agricultural college lands.

Of these grants one million acres were for the payment of the bonds issued by Grant and Santa Fé counties, New Mexico, validated by Congress in 1897,[26] and one million acres for the payment of bonds issued by Pima, Yavapai, Maricopia, and Coconino counties, Arizona, validated by Congress in 1896.[27] In case there is a surplus after discharging these obligations it goes to the permanent school fund.

A statement in tabular form of the amount and purpose of these grants follows:

[21] *Statutes at Large*, 25: 681.
[22] *Ibid.*, 26: 217, 224.
[23] *Ibid.*, 28: 109-110.
[24] The act states that these grants are in lieu of the swamp and internal improvement lands, but no salt spring lands were given, so it is virtually in lieu of the three. *Ibid.*, 34: 275.
[25] *Ibid.*, 34: 283.
[26] *Ibid.*, 29: 488.
[27] *Ibid.*, 262.

NORTH DAKOTA AND SOUTH DAKOTA[28]

Purpose of grant	Area	Time
School of Mines	40,000	February 22, 1889
University	40,000	
Agricultural College	40,000	
Reform school	40,000	
Normal schools	80,000	
Deaf and Dumb Asylum	40,000	
Public buildings at capital	50,000	
Other educational and charitable institutions	170,000	
United States Penitentiary		
Total	500,000	

MONTANA[29]

Purpose of grant	Area	Time
School of Mines	100,000	February, 22, 1889
Agricultural colleges	50,000	
Reform schools	50,000	
Normal schools	100,000	
Deaf and Dumb Asylum	50,000	
Public buildings at capital	150,000	
Deer Lodge Penitentiary		
Total	500,000	

WASHINGTON[30]

Purpose of grant	Area	Time
Scientific School	100,000	February 22, 1889
Normal schools	100,000	
Public buildings at capital	100,000	
Charitable, penal, educational, and reformatory institutions	200,000	
United States Penitentiary		
Total	500,000	

IDAHO[31]

Purpose of grant	Area	Time
Scientific School	100,000	July 3, 1890
University at Moscow	50,000	
Normal schools	100,000	
Penitentiary at Boise City	50,000	
Insane Asylum at Blackfoot	50,000	
Other charitable, penal, educational, and reformatory institutions	150,000	
Total	500,000	

[28] *Ibid.*, 25: 681.
[29] *Ibid.*
[30] *Ibid.*
[31] *Ibid.*, 26: 217.

WYOMING[82]

Purpose of grant	Area	Time
Insane Asylum in Uinta County	30,000	July 10, 1890
Penal, educational, and reformatory institutions in Carbon County	30,000	
Penitentiary in Albany County	30,000	
Fish Hatchery in Albany County	5,000	
Deaf, Dumb, and Blind Asylum in Laramie County	30,000	
Poor Farm in Fremont County	10,000	
Hospital for Miners Disabled in Mines of State	30,000	
Public buildings at capital	75,000	
State charitable, educational, penal, and reformatory institutions	260,000	
Total	500,000	

UTAH[83]

Purpose of grant	Area	Time
University	110,000	July 16, 1894
Permanent water reservoirs for irrigating purposes	500,000	
Insane Asylum	100,000	
School of Mines in connection with University	100,000	
Deaf and Dumb Asylum	100,000	
Reform school	100,000	
Normal schools	100,000	
Institution for the Blind	100,000	
Miners' Hospital for Disabled Miners	50,000	
United States Penitentiary near Salt Lake City		
Total	1,260,000	

OKLAHOMA[84]

Purpose of grant	Area	Time
University	250,000	June 16, 1906
University Preparatory School	150,000	
Agricultural and Mechanical College	250,000	
Colored Agricultural and Normal University	100,000	
Normal schools	300,000	
Total	1,050,000	

[82] *Ibid.*, 224.
[83] *Ibid.*, 28: 110.
[84] *Ibid.*, 34: 275.

NEW MEXICO—Territorial Grant[36]

Purpose of grant	Area	Time
Military Institute	50,000	June 21, 1898
Normal schools	100,000	
Reform school	50,000	
Asylum for Deaf and Dumb	50,000	
School of Mines	50,000	
Institute for Blind	50,000	
Hospital for Disabled Miners	50,000	
Insane Asylum	50,000	
Penitentiary	50,000	
Permanent water reservoir	500,000	
Improvement Rio Grande and increase of surface flow	100,000	
Building at Santa Fé known as Palace		
Total	1,100,000	

ARIZONA AND NEW MEXICO[36]

Purpose of grant	Area	Time
University	200,000	June 20, 1910
School of Mines	150,000	
Agricultural and Mechanical colleges	150,000	
Military institutes	100,000	
Normal schools	200,000	
Schools and asylums for deaf, dumb, and blind	100,000	
Insane asylums	100,000	
Penitentiaries	100,000	
Miners' hospitals for disabled miners	50,000	
Legislative, executive, and judicial buildings	100,000	
Charitable, penal, and reformatory institutions	100,000	
Payment of bonds issued by certain counties	1,000,000	
Total	2,350,000	

In the first grant of salt spring lands Congress itself selected the springs and designated what lands should go with them. The other grants prior to 1820 were also for the most part selected by the federal government.[37] In 1820, in the enabling act of Missouri, the duty of selecting the springs and the land was conferred upon the state legislature.[38] After 1857 this duty fell to the state governor.[39] The lands granted in lieu of the swamp, salt spring, and internal improvement lands after 1889 were selected in the same manner as the university lands.

[35] *Ibid.*, 485; "Report Commissioner General Land Office," 1907, *Reports of Department of Interior, Administrative Reports*, 1, 162, C. S., 5295.
[36] *Statutes at Large*, 36: 562-563, 573.
[37] *Laws of the United States*, 3: 498; 6: 68, 294, 382.
[38] *Ibid.*, 6: 458; 9: 394-395; 10: 770; *Statutes at Large*, 9: 58.
[39] *Statutes at Large*, 11: 167, 384; 12: 127; 13: 49; 18: 476.

During the first half of the nineteenth century Congress sought to exercise certain control over the leasing of the salt spring lands. Up to 1820 no state might lease such lands for more than ten years. States admitted after 1820 were allowed to make leases for a longer period with the consent of Congress. Wisconsin in 1846 and all states receiving the grant subsequently were given a free hand in disposing of the lands.[40]

The control over the sale of the lands has followed a similar course; absolute prohibition for states admitted before 1820;[41] from 1820 to 1845, prohibition, modified by the stipulation that the lands might be sold providing the consent of Congress should first be obtained;[42] from 1846 to 1875, all restrictions withdrawn.[43]

The prohibition on the sale of the land was removed by subsequent acts. The first of these came in 1816, when Ohio was authorized to sell one section to build a court-house in Jackson County.[44] Eight years later the state was allowed to sell the balance of the grant, the proceeds to be used for "literary purposes."[45]

The resulting fund, which ultimately amounted to $41,024.05, was made a common school fund in 1827. From 1835 to 1845 the interest was distributed to the common schools. After 1845 no distribution was made, and now the fund has disappeared.[46]

In 1832 Indiana was authorized to sell, the proceeds to be applied to "the purpose of education."[47] The minimum price was fixed at one dollar and twenty-five cents an acre, but in 1852, when the best lands had been sold, this provision, at the request of the state, was repealed.[48] The proceeds have been devoted to the support of common schools.[49]

Illinois was authorized to sell her lands by acts of 1828, 1831, 1832, and 1847. In the disposition of the proceeds the state was given a free hand.[50] Missouri received permission to sell in 1831, the resulting fund to be applied "forever" "for the purpose of education in said state." The proceeds have been incorporated with the common school fund.[51] Arkansas and Michigan were authorized to sell in 1847, and Iowa in 1862, without any stipulation as to the use of the proceeds.[52]

Except as indicated above there have been no limitations on the use of the proceeds derived from the sale of the salt spring lands. Of only one

[40] *Laws of the United States; Statutes at Large.*
[41] *Ibid.*, 3: 498; 6: 69, 295, 383.
[42] *Ibid.*, 6: 458; 9: 394; 10: 770.
[43] *Statutes at Large*, 9: 58; 11: 166, 384; 12: 128; 13: 49; 18: 475.
[44] *Laws of the United States*, 6: 62.
[45] *Ibid.*, 7: 334.
[46] Knight, "Land Grants for Education in the Northwest Territory," American Historical Association, *Papers*, 1: no. 3, 59-60.
[47] *Laws of the United States*, 8: 643.
[48] *Statutes at Large*, 10: 15.
[49] Knight, "Land Grants for Education in the Northwest Territory," American Historical Association, *Papers*, 1: no. 3, 73-74.
[50] *Laws of the United States*, 8: 117, 430, 517; *Statutes at Large*, 9: 182.
[51] Swift, *Public Permanent Common School Funds in the United States*, 322.
[52] *Statutes at Large*, 9: 182; 10: 7.

state, Missouri,[53] has Congress required that the fund derived from the salt spring lands should be permanent, and in no case has there been any provision to insure the safe investment of the fund. The latter policy was not developed until long after the salt spring lands had passed beyond national control.

Reference has been made in former chapters to the trend during the last twenty-five years in the direction of greater and greater national control over school and university lands. It is surprising to find that the land grants in lieu of the swamp, salt spring, and internal improvement lands were not at once included in this movement. In many cases, it is true, no provision could be made for the permanence of the resulting fund, for by the very nature of the grant the fund could not be permanent. But, with this exception, it is by no means apparent why these lands should not have been hedged about with the same safeguards as the school and university lands.

Before the admission of Arizona and New Mexico there were only two restrictions on the disposal of these lands. In 1890 Idaho and Wyoming were forbidden to sell any of their lands for less than ten dollars an acre.[54] Oklahoma in 1906 was prohibited from leasing any of its mineral lands except in a manner prescribed, with which we are already familiar.[55] Not until 1910 did Congress perceive the inconsistency of its course. In the act of that year for the admission of Arizona and New Mexico, all lands were put into one class in the matter of leasing and sale, exemption from mortgage, minimum price, and investment and safeguarding of the proceeds.[56]

[53] *Laws of the United States*, 8: 501.
[54] *Statutes at Large*, 25: 217, 224.
[55] *Ibid.*, 34: 274.
[56] *Ibid.*, 36: 557.

CHAPTER V

THE PUBLIC BUILDING LANDS

From our study of colonial land grants we are familiar with the fact that in several of the colonies community land was given as sites for public buildings, such as churches, schools, and court-houses. The first federal land grants for public buildings were devoted to the same purpose. They were intended for capitol grounds. While it is impossible to trace the origin of the federal policy to the colonial precedents and while it is not improbable that there may be no well-defined connection, it is very likely that there were men in the Congress of 1816, when the first grant of this character was made, who were familiar with the colonial practice.

Indiana was the first state to receive this grant. Four sections of land were given, "for the purpose of fixing their seat of government thereon," Like the school, the university, and the salt spring grants, this grant was one of the considerations for the agreement on the part of the state not to tax United States land for five years after the day of sale.[1]

Every public land state except Ohio and Louisiana has received a grant of land for public buildings. But the purpose of the grant has been changed in one important respect. The first five states, Indiana, Mississippi, Illinois, Alabama, and Missouri, received the grant in its original form, for a seat of government.[2] Thereafter most of the new states received the grant, not for a seat of government, but to defray the cost of erecting the public buildings. The transition began in 1824, when the territory of Florida received one quarter-section of land for the "seat of government" but with authority to sell a portion of the grant in order to raise funds for public buildings.[3] In 1827 another quarter-section was given, the first grant solely for a building fund.[4] Two years later six more were added, four of these for the same purpose and two for the use of the future state.[5] In 1831 ten sections were granted to the territory of Arkansas to erect a public building at Little Rock.[6] In 1836, when the territory became a state, five additional sections were given for the same purpose.[7] The last grant for the original purpose was made to Florida in 1845.[8]

[1] *Laws of the United States*, 6: 68-69.
[2] *Ibid.*, 6: 69, 351, 374, 384, 426, 458.
[3] *Ibid.*, 7: 275.
[4] *Ibid.*, 537.
[5] *Ibid.*, 8: 215.
[6] *Ibid.*, 8: 462.
[7] *Ibid.*, 9: 394.
[8] *Ibid.*, 10: 767.

In its original form the extent of the grant for a seat of government was limited by its purpose, generally to four sections, or four square miles, but varying in amount from two sections to Mississippi[9] to eight sections to the state of Florida.[10] When the purpose of the grant was changed the amount was gradually increased. Arkansas[11] and Michigan[12] each received five sections at the time of their admission to the Union in 1836. This was increased to ten sections for Wisconsin[13] in 1846; twenty, for Nevada[14] and Nebraska[15] in 1864; and fifty, for Colorado[16] in 1875. After 1875 the amount of the grant has remained at fifty sections with the exception that Utah, owing to the arid character of its unappropriated lands, was given a double grant, and that the grant to Oklahoma took another form.

In 1893, by proclamation of President Cleveland, the Pawnee Indian Reservation, the Cherokee Outlet, and the Tonkawa Indian Reservation were opened to settlement, subject to certain reservations. Among these was one of section thirty-three in each township[17] for public buildings.[18] This reservation was confirmed by Congress the next year.[19] The land thus reserved was granted to Oklahoma when it entered the Union in 1906.[20] It amounts to 274,228 acres and is the largest of the public building grants.

In 1864, in addition to the usual grants for public buildings, Congress began to give land for state penitentiaries. Nevada[21] received twenty sections and Nebraska fifty.[22] In 1875 Colorado[23] received fifty sections for the same purpose. Two of the states admitted in 1889, Montana and South Dakota, instead of a land grant, each received the buildings and grounds of a United States penitentiary. The other two, Washington and North Dakota, each received an appropriation of thirty thousand dollars for penitentiary buildings. Of the six states admitted after 1889 the first three received penitentiary buildings,[24] and the last two, land grants for this purpose.[25] Oklahoma is the only state admitted during the last half-century for which there has been no provision of this kind. The grants to New Mexico and Arizona, however, strictly speaking, are not public building grants, for they were given in place of the swamp, salt spring, and internal improvement lands.

[9] *Ibid.*, 6: 374.
[10] *Ibid.*, 10: 767.
[11] *Ibid.*, 9: 394.
[12] *Ibid.*, 396.
[13] *Statutes at Large*, 9: 58.
[14] *Ibid.*, 13: 32.
[15] *Ibid.*, 49.
[16] *Ibid.*, 18: 475.
[17] Except in a few townships where section thirty-three had been disposed of for other uses.
[18] *Statutes at Large*, 28: 1229.
[19] *Ibid.*, 71.
[20] *Ibid.*, 34: 273.
[21] *Ibid.*, 13: 32.
[22] *Ibid.*, 49.
[23] *Ibid.*, 18: 475.
[24] *Ibid.*, 26: 216, 223; 28: 110. Idaho and Wyoming received both penitentiary buildings and land grants.
[25] *Ibid.*, 36: 562, 573.

The amount of public building lands received by each of the states and the time and purpose of the grant is shown by the following table:[26]

State	No. of section	Purpose	Time
Indiana	4	Seat of government	1816
Mississippi	2	Seat of government	1819
Illinois	4	Seat of government	1819
Alabama	1,620 acres	Seat of government	1819
Missouri	4	Seat of government	1820
Arkansas	10	Public buildings at seat of government	1831
	5	Public buildings at seat of government	1836
Michigan	5	Public buildings at seat of government	1836
Iowa	1	Seat of government	1839
	5	Public buildings at seat of government	1845
Florida	¼	Both purposes	1824
	¾	Public buildings (regranted in 1829)	1827
	1	Public buildings	1829
	½	Not specified	1829
	8	Seat of government	1845
Wisconsin	10	Public buildings at seat of government	1846
California	450 acres	Site for a penitentiary	1864
	10	Public buildings at seat of government	
Minnesota	10	Public buildings at seat of government	1857
Oregon	10	Public buildings at seat of government	1859
Kansas	10	Public buildings at seat of government	1861
Nebraska	20	Public buildings at seat of government	1864
	50	Penitentiary	1864
Nevada	20	Public buildings at seat of government	1864
	20	Penitentiary	1864
Colorado	50	Public buildings at seat of government	1875
	50	Penitentiary	1875
North Dakota	50	Public buildings at seat of government	1889
South Dakota	50	Public buildings at seat of government	1889
Montana	50	Public buildings at seat of government	1889
Washington	50	Public buildings at seat of government	1889
Idaho	50	Public buildings at seat of government	1890
Wyoming	50	Public buildings at seat of government	1890
Utah	100	Public buildings at seat of government	1894
Oklahoma — Section 33 in certain Indian Reservations, amounting to 274,228 acres		Public buildings at seat of government	1906
Arizona	50	Public buildings at seat of government	1910
New Mexico	50	Public buildings at seat of government	1910

This makes a total of a little more than half a million acres.

[26] *Laws of the United States; Statutes at Large; House Miscellaneous Documents*, 33 Congress, 2 session, no. 18, 4, C. S., 514; *Executive Documents*, 33 Congress, 1 session, no. 52, 2, C. S., 721.

As long as the public building lands were intended for capitol grounds, the selection of the lands was left to the state legislature. To this statement there are exceptions. The lands granted to the state of Alabama in 1819 and to the territory of Florida in 1829 were designated by Congress.[27] Up to 1889 the precedent established by the character of the original grant was followed in all cases except Florida, Minnesota, Oregon, and Kansas,[28] where the selection of the lands was left to the governor. After 1889 the method of selecting the public building lands has been the same as for the selection of university lands, which has been explained elsewhere.

While the grant for public buildings retained its original form the lands given were not intended for sale. This follows from the purpose of the grant.

After the form of the grant was changed there was no limitation on the power to lease or to sell, before 1890, when Idaho and Wyoming were forbidden to dispose of their lands for less than ten dollars an acre.[29] Utah received her grant four years later subject to no limitations.[30] The subsequent history of this grant in regard to the matter of leasing and sale is the same as that for the university lands.

The grant being given for public buildings, it follows that the proceeds derived from the sale of the lands should be devoted to this purpose. In one case, however, Congress has given authority to devote the fund to other objects. In 1862 Iowa was authorized to make such disposition of the lands as it might deem for the best interests of the state.[31]

For the investment and safeguarding of the proceeds derived from the sale of the public building lands provision was made for the first time in 1910, by the enabling act of Arizona and New Mexico.

[27] *Laws of the United States*, 6: 384; 8: 215.
[28] *Statutes at Large*, 11: 167, 384; 12: 127; *Laws of the United States*, 7: 275.
[29] *Ibid.*, 26: 217, 224.
[30] *Ibid.*, 28: 109-110.
[31] *Ibid.*, 12: 536.

CHAPTER VI

THE FIVE PER CENT FUND

Every public land state in the Union has received a portion of the net proceeds derived from the sale of the federal lands within its borders, generally five per cent. The resulting fund has come to bear the name of the five per cent fund or the three per cent fund.

The five per cent fund was originally devoted to the construction of roads "leading from the navigable waters emptying into the Atlantic, to the Ohio, to the said state, and through the same; such roads to be laid out under the authority of Congress, with the consent of the several states through which the road" should "pass."[1] Why was the fund devoted to this particular purpose? There were two reasons, one commercial, the other political.

After the Revolution hard times in the states on the Atlantic seaboard and the fertility of the vacant lands beyond the mountain barrier turned the tide of emigration westward. By 1790 the population of Tennessee had reached 35,000, that of Kentucky, 73,000, and that of Ohio, ten years later, 45,000. The emigrants had found their way to the West over a road cut through the forests of western Pennsylvania by General Forbes on his march to the capture of Fort Duquesne or over the more southerly route followed by Braddock's army the year before or over the Wilderness Road, still farther south.[2]

These roads, however, were little more than trails, inadequate for travel and almost useless for commercial intercourse. But with this economic isolation there followed political disagreement between the East and the West, which in one locality culminated in the Whiskey Insurrection of 1794.

Such was the commercial and political situation when Albert Gallatin came to the head of the treasury department in 1801. Himself a resident of western Pennsylvania, the region of the Whiskey Insurrection, he was well acquainted with frontier conditions. In a later chapter further reference will be made to the part he played in securing the appropriation of part of the proceeds from the sale of public lands for the construction of roads. From the following observations in a letter to the chairman of the committee on the admission of Ohio into the Union, it is clear that the two considerations referred to above were in his mind. He remarked: "The roads will be as beneficial to the parts of the Atlantic States, through which they are to pass, and nearly as much to a considerable portion of the Union, as to

[1] *Laws of the United States*, 3: 498.
[2] Young, *The Cumberland Road*, 11-12.

the Northwestern Territory itself. But a due attention to the particular geographical situation of that Territory and of the adjacent Western districts of the Atlantic States, will not fail to impress you strongly with the importance of that provision, in a political point of view, so far as it will contribute towards cementing the bonds of union between those parts of the United States, whose local interests have been considered as most dissimilar."[3]

The Ohio convention, however, did not accept the proposition in its original form, but proposed that three per cent of the proceeds from the sale of lands in Ohio should be expended for roads within the state under the direction of the state legislature.[4] This change received the approval of Congress in 1803.[5]

The practice of dividing the five per cent fund between the state and the nation was followed in all subsequent grants prior to 1836, except the grant to Louisiana in 1811, which gave the whole fund to the state.[6]

The two per cent fund thus left at the disposal of the national government made possible the beginning of the famous Cumberland Road.[7] The fund, however, did not accumulate fast enough to meet the cost of construction; so Congress adopted the policy of making advances from the treasury, such advances to be reimbursed from the money that should later accumulate from two per cent of the receipts from the sale of land within the public land states intended to be traversed by the road, Ohio, Indiana, Illinois, and Missouri.[8] When the road was surrendered to the states these advances exceeded the fund by more than five million dollars.[9]

When Arkansas and Michigan were admitted to the Union in 1836 the advent of the railroad had diminished the importance of national roads.[10] At the same time the strength of the states' rights party rendered federal activity in this direction unpopular.[11] The changed attitude toward the national road found concrete expression in the change in the grant.[12] Henceforth the new states received the five per cent fund without division.

More than this, in 1841, the states which originally had received but three per cent of the fund and no federal assistance in the construction of roads, Alabama and Mississippi, were granted the other two per cent, the amount to be reckoned from the time of their admission.[13] The Cumberland Road was surveyed to Jefferson City, Missouri, but construction never reached that state. On this account, in 1859, like provision was made for

[3] *Annals of Congress*, 7 Congress, 1 session, 1102.
[4] Young, *The Cumberland Road*, 15.
[5] *Laws of the United States*, 3: 542.
[6] *Ibid.*, 4: 330.
[7] *Ibid.*, 13.
[8] *Ibid.*, 4: 13, 245, 356, 426; 8: 55, 206, 207, 389, 457; 9: 44, 233, 450.
[9] Young, *The Cumberland Road*, 105.
[10] *Ibid.*, 96.
[11] *Ibid.*, 97.
[12] *Laws of the United States*, 9: 394, 396.
[13] *Ibid.*, 10: 161.

Missouri. That state had already devoted the fund to the construction of railroads.[14]

In every case except California and New Mexico the grant of the three per cent or the five per cent fund has come to the public land states at the time of their admission to the Union. With the question of slavery the paramount issue in the compromise measures of 1850, of which the admission of California was one, all grants to that state were postponed. Some of the land grants were remembered three years later, but for the five per cent fund the state had to wait until 1906,[15] when it received nearly one million dollars in one year.[16] New Mexico received its grant in 1898, while still a territory.[17]

With the exception of the three public land states that were beneficiaries of the great road-building venture of the federal government every public land state has received five per cent of the proceeds from the sales of public land within its borders subsequent to its admission. Ohio, Indiana, and Illinois received only three per cent, but many times an equivalent for the two per cent in the expenditures by the federal government for that part of the Cumberland Road which they inherited. The actual cost to the United States of that section of the road which traversed these states was $3,534,000,[18] while the total amount of the two per cent fund of the same states, after all their federal land had been sold, was but $1,291,000.[19]

There follows a statement of the amount accrued and paid on account of grants of two, three, and five per cent of the net proceeds of the sales of public lands, to June 30, 1910, as well as during the fiscal year 1910.[20]

State	Fiscal year 1910	Aggregate to June 30, 1910
Alabama	$ 749.18	$ 1,076,404.03
Arkansas	1,676.80	319,032.92
California	15,718.58	1,048,614.93
Colorado	20,617.21	429,227.12
Florida	1,098.38	131,239.38
Idaho	13,440.14	220,163.89
Illinois		1,187,908.89
Indiana		1,040,255.26
Iowa		633,638.10
Kansas	6,180.63	1,118,426.51
Louisiana	179.75	467,432.81
Michigan	393.77	586,579.96
Minnesota	7,995.76	582,077.05
Mississippi		1,069,843.91

[14] *Statutes at Large*, 11: 388.
[15] *Ibid.*, 34: 518.
[16] "Report Commissioner General Land Office," 1907, *Reports of Department of Interior, Administrative Reports*, 1, 188, C. S., 5295.
[17] *Statutes at Large*, 30: 485.
[18] Young, *The Cumberland Road*, 94.
[19] "Report Commissioner General Land Office," 1907, *Reports of Department of Interior, Administrative Reports*, 1, 188, C. S., 5295.
[20] *Ibid.*, 1911, p. 139, C. S., 6222.

State	Fiscal year 1910	Aggregate to June 30, 1910
Missouri	1,803.49	1,058,970.43
Montana	31,658.77	332,310.65
Nebraska	4,538.07	544,915.02
Nevada	2,660.55	25,984.82
New Mexico	23,293.48	95,369.71
North Dakota	39,448.72	473,354.64
Ohio		999,353.01
Oklahoma	11,484.23	50,127.86
Oregon	13,532.09	688,902.14
South Dakota	35,069.76	213,508.12
Utah	17,310.06	71,596.56
Washington	13,018.42	380,718.96
Wisconsin	91.52	586,137.60
Wyoming	14,442.56	174,627.62
Total	$276,401.92	$15,606,721.90

The purposes for which the five per cent fund should be used have invariably been designated by Congress. Two periods may be recognized. Prior to 1889 the purpose indicated was generally internal improvements. From 1889 to 1910 the support of common schools was the use required.

Of the twenty-nine states that have received it thirteen have been required to use the fund for the former purpose. In the grants to Ohio in 1802 and 1803 public roads alone were designated.[21] From 1816 to 1846 canals and, sometimes, the improvement of rivers, were coupled with public roads.[22] Then the success of the railroad caused Congress to include this mode of transportation under the broader term of "internal improvements."[23] When the two per cent was granted to Mississippi in 1841 she was authorized to use it for railroad construction.[24] In 1864 Nevada was directed to use her fund for public roads and the irrigation of agricultural land.[25]

Sixteen states have been directed or authorized to use the fund for the promotion of education; of these, thirteen for common schools; one, Illinois, "for the encouragement of learning, of which one-sixth part" for "a college or university"; one, Florida, "for purposes of education." Iowa and Wisconsin were originally instructed to use the fund for public roads and canals, but the Iowa convention of 1846 made the fund permanent and devoted it to the support of common schools,[26] while the Wisconsin convention of the same year, subject to the approval of Congress, devoted it to the support of

[21] *Laws of the United States*, 3: 498, 542.
[22] *Ibid.*, 6: 383, 458; 9: 394, 396; 10: 161; *Statutes at Large*, 9: 58.
[23] *Statutes at Large*, 11: 167, 384; 12: 127; 18: 476.
[24] *Laws of the United States*, 10: 161.
[25] *Statutes at Large*, 13: 32.
[26] "Iowa Constitution of 1846," art. 9, sec. 3, in Poore, *United States Charters and Constitutions*, 1: 548.

common schools, academies, and normal schools.[27] These changes received the approval of Congress.[28]

During the first period Congress did not require that the principal of the fund should be kept intact, nor would this in most cases have been a proper requirement, considering the purpose of the grant. Two of the states, however, that were authorized to devote the fund to the promotion of education, Wisconsin in 1848, and Nebraska in 1866,[29] insured the permanence of the fund by clauses in their constitutions. Illinois made like provisions by statute.[30] All the states that received the grant during the second period except California were allowed to use the interest only.[31]

The first provision for the safe investment of the five per cent fund was made in 1910 in the enabling act for Arizona and New Mexico.[32]

There remains for consideration but one other matter. What action has been taken by the national government to make the stipulations of its grants mean something more than salutary advice and a moral obligation? It is appropriate to point out here that in the case of the five per cent fund, which accrues gradually and is paid from year to year, Congress has a power which it does not possess over land grants. In 1822 that body sought to take advantage of this situation by requiring of Missouri, Alabama, and Mississippi an annual account of the amount and application of the "fund" in their possession. In case of failure to make such a report to the head of the treasury department that officer was instructed to withhold payment of any sum that might be due.[33] This is the only case in which the federal government has sought to supervise the action of the states in regard to the use of the five per cent fund, and this requirement was not long continued. In 1831 Congress concluded that it was improper, because not included in the original compacts, vexatious to the states, troublesome to the treasury department, and of no consequence from any point of view.[34]

There is, however, one case on record in which the United States has used the five per cent fund to compel substantial compliance with the terms of a land grant. In 1838 Congress gave to the territory of Wisconsin the odd-numbered sections contained in a five-mile strip on each side of the line of a proposed canal connecting the Rock River with Lake Michigan. The grant took effect immediately, but it was made on the condition that if the canal should not be completed within ten years the United States should be entitled to receive the amount for which the land might have been sold.[35]

[27] "Wisconsin Constitution of 1848," art. 10, sec. 2, in Poore, *Charters and Constitutions*, 2: 2039.
[28] *Statutes at Large*, 9: 179, 349.
[29] "Wisconsin Constitution of 1848," art. 10, sec. 2, in Poore, *Charters and Constitutions*, 2: 2039; "Nebraska Constitution of 1866," Education, sec. 1, in Poore, *Charters and Constitutions*, 2: 1211.
[30] Swift, *Public Permanent Common School Funds in the United States*, 255.
[31] *Statutes at Large*, 25: 680; 26: 216, 223; 28: 110; 34: 274, 518; 36: 563, 574.
[32] *Ibid.*, 36: 564, 575.
[33] *Laws of the United States*, 7: 46-47.
[34] *Congressional Debates*, 7: 464; *Laws of the United States*, 8: 399-400.
[35] *Laws of the United States*, 9: 788.

Neither of these conditions was fulfilled. Then Congress in 1864, in the midst of the financial strain of the Civil War, gave orders that in adjusting the amount due the state of Wisconsin the secretary of the interior should charge against her the sum received from the sale of the 125,000 acres granted in 1838, crediting her only with the amount actually used for canal construction.[36]

[36] *Statutes at Large*, 13: 413.

CHAPTER VII

THE CONDITIONS OF THE FEDERAL LAND GRANTS

There are two classes of conditions connected with the federal land grants: first, those required of the state in return for the grant but not otherwise pertaining to the grant; second, those relating directly to the use of the land. The latter are more properly studied in connection with the various land grants and need not concern us here. The former are general in character and therefore require separate treatment. It is proper to take the matter up at this point, for the land grants described in the foregoing chapters are the ones which have constituted the equivalent for the conditions that are to be considered here.

The first mention of the conditions that later were connected with the land grants to the new states appears to have occurred in connection with the Ordinance of 1784 for the temporary government of the Northwest Territory, the precursor and in part the model for the more famous Ordinance of 1787. When the former measure was reported to Congress by Jefferson, as chairman of the committee to which the matter had been referred, it contained several conditions to be imposed upon the western territory and future states, but not any of the conditions that later were attached to land grants.[1] But by amendment the following conditions were included: "1. That they [the temporary and permanent government] in no case interfere with the primary disposal of the soil by the United States in Congress assembled nor with the ordinances and regulations which Congress may find necessary for securing the title in such soil to the bona fide purchasers.

"2. That no tax shall be imposed on lands the property of the United States.

"3. That the lands of non-resident proprietors shall, in no case, be taxed higher than those of residents within any new state, before the admission thereof to a vote by its delegates in Congress."[2]

The framers of the Ordinance of 1787 included all these conditions of the earlier ordinance, and made the third one applicable after, as well as before, the admission of the state to the Union. They also added the following requirement: "The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory, as

[1] Ford, *Writings of Thomas Jefferson*, 3: 431-432.
[2] *Journals of Congress*, 9: 105; Ford, *Writings of Thomas Jefferson*, 3: op. p. 428.

to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost or duty therefor."[3] The ordinance declared that these provisions, together with a number of others that do not concern us here, should be considered as articles of compact between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent. Although we have no account of the debate in Congress on these measures, from our knowledge of the precarious position of the confederate government at the time when they were enacted, we can surmise why they found a place in the early legislation for the Northwest Territory. They concerned four matters in which the central government was vitally interested: the title to its lands, the taxation of its lands, the discrimination against non-resident land owners, and the freedom of commerce on the great rivers of the West. There was nothing in the Articles of Confederation authorizing the national government to own land or denying to the states the right to tax United States land, to discriminate in taxation against non-resident land owners, or to raise tariff walls against their sister states. Congress therefore feared that the future states might question the title of the confederation to its public domain, might render the public land a source of expense instead of income by imposing taxes upon it, might reduce the market value of its land by discriminating taxation, and might repeat on the western rivers, which were even at this early period great avenues of commercial intercourse, the petty tariff wars that were the despair of commerce in the eastern states.

These conditions, therefore, in connection with the very significant provision that they should remain a compact, reflect the weakness of the central government. Accordingly it took refuge in a statute, which it chose to call a compact, although it received the sanction of but one of the supposed contracting parties. In this manner four of the six conditions which we shall meet in the land grants of the first half of the nineteenth century had their beginning. They were not, in their origin, conditions of land grants, and they were not compacts, although they bore the name.

Kentucky and Vermont entered the Union without land grants and without conditions. It was not till Ohio was adopted into the growing family of states that a grant of land was included in an enabling act. At this time Albert Gallatin was secretary of the treasury. The burden of the war debt was still heavy and Gallatin was devoting his great ability as a financier to devising ways and means for reducing this burden.[4] The sale of western lands was at the time a source of revenue. It was therefore a matter of considerable importance to make certain that no new state created in the Northwest Territory should be in a position to impose burdens upon the federal

[3] *Journals of Congress*, 12: 62.
[4] *Annals of Congress*, 7 Congress, 1 session, 1100-1103.

lands within its borders that would render them unsalable or diminish their value. Certain safeguards had, it is true, been included in the Ordinance of 1787. In the opinion of Gallatin these limitations would remain binding upon the proposed state of Ohio even after its admission. This explains why they were not included in the enabling act. But in order to increase the value of the public land he desired an additional limitation on the proposed state, and this he believed could not be imposed except by the consent of the state. This limitation was to the effect that every tract of land sold by Congress should remain exempt from any state, county, township, or other tax for a period of ten years after the completion of the payment of the purchase money to the United States. As an equivalent Gallatin proposed that section sixteen in each township sold or directed to be sold by the United States should be granted to the inhabitants of such township for the use of schools; that the "six-miles reservation, including the Scioto salt springs," should be granted to the new state and that one tenth of the net proceeds from the future sales of the lands lying in the state should be used to build national roads from the rivers of the Atlantic slope to the Ohio,[5] and through the new state.

As first reported by the committee all of Gallatin's suggestions were adopted in the form proposed. But Congress considered the provision for national roads too liberal; so this was reduced by one half.

The propositions were made to the state on the express condition that the constitutional convention should provide by an ordinance irrevocable without the consent of the United States that the land sold by Congress after a certain date should remain exempt from any tax laid by the state or any of its local divisions for a period of five years after the day of sale.[6]

Indiana in 1816 received her lands on the same condition as Ohio;[7] Illinois, hers, two years later, with two additional conditions: exemption of bounty lands from taxation by the state for three years after the date of the patent if held by the patentees or their heirs, and equal taxation of land belonging to residents and land belonging to non-resident citizens of the United States.[8] The next year Alabama received her lands subject to five conditions, the four referred to in connection with the Northwest Ordinance, and the one required of Ohio.[9] No further conditions of this character have been exacted of any state in return for land grants. The exemption of land from taxation after patent had been issued to the purchaser was required for the last time in 1820.[10] The three-year exemption of bounty land was discontinued after 1845.[11]

[5] *Ibid.*, 1102.
[6] *Laws of the United States*, 3: 498.
[7] *Ibid.*, 6: 69.
[8] *Ibid.*, 295.
[9] *Ibid.*, 383.
[10] *Ibid.*, 458-459.
[11] *Ibid.*, 10: 771; *Statutes at Large*, 9: 58.

Missouri,[12] Arkansas,[13] Michigan,[14] Iowa,[15] Wisconsin,[16] Minnesota,[17] Oregon,[18] and Kansas[19] received their lands subject to two or more of these conditions. But with the second enabling act of Kansas, in 1861, conditions of this character were coupled with land grants for the last time.

Even during the half-century when it was customary to attach conditions of the character we have mentioned to the enabling act land grants, several of the states received their lands without such restrictions. These were Louisiana,[20] Mississippi,[21] Florida,[22] and California.[23] Many of the same conditions, it is true, were imposed upon them, but merely as conditions of admission to the Union.

After 1861 there has been a tendency to multiply the conditions imposed on the new states. Several of them have been of a political character and unquestionably unconstitutional. But in no case have they been connected with the land grants and therefore they do not call for consideration here.[24]

Before leaving this subject we should try to determine whether the conditions we have been considering are constitutional. They have all been in the form of compacts with the new states. Their validity, accordingly, depends upon the validity of such agreements. This, therefore, is the question that we must consider. In the case of Pollard's Lessee v. Hagan,[25] decided in 1845, the Supreme Court allows no validity to such a compact if it in any wise deprives the state of its equal position in the family of commonwealths.

But the great opinion of Justice Lurton in the recent case of Coyle v. Oklahoma[26] gives us the most satisfactory analysis of the principles which determine the validity of a compact between a state and the nation. That case raised the question as to the constitutionality of a provision of the enabling act of Oklahoma to the effect that the state should not change the location of its capital before 1913. This requirement had been formally accepted by the constitutional convention of the state, so it had at least the form of a compact. But the Supreme Court found it to be of no effect. The court reasons that the power given by the Constitution with reference to the admission of states into the Union is one to admit "states," not political organizations with a greater or a lesser dignity. It argues further that the

[12] *Laws of the United States*, 6: 458-459.
[13] *Ibid.*, 9: 395.
[14] *Ibid.*, 396.
[15] *Ibid.*, 10: 770-771.
[16] *Statutes at Large*, 9: 58.
[17] *Ibid.*, 11: 167.
[18] *Ibid.*, 384.
[19] *Ibid.*, 12: 127-128.
[20] *Laws of the United States*, 4: 54; 10: 432.
[21] *Ibid.*, 3: 551; *Statutes at Large*, 10: 6.
[22] *Laws of the United States*, 10: 767-768.
[23] *Statutes at Large*, 10: 248.
[24] See Dunning's *Essays on the Civil War and Reconstruction*, 304-352.
[25] 3 *Howard*, 212.
[26] Coyle *v.* Oklahoma, 221 *United States*, 559.

power is one to admit states into "this union." But "this union" is a union of states equal in power. A different view would mean that the powers of Congress are not defined by the Constitution alone, but may be enlarged or restricted in respect to new states by the conditions of its own legislation admitting them into the Union, and that such states may exercise only such powers as are not bargained away as conditions of admission.

The conclusion of the court is very clearly summed up in the following paragraph: "The plain deduction from this case is that when a new state is admitted into the Union, it is so admitted with all the powers of sovereignty and jurisdiction which pertain to the original states, and that such powers may not be constitutionally diminished, impaired, or shorn away by any conditions, compacts, or stipulations embraced in the act under which the new state came into the Union, which would not be valid and effectual if the subject of congressional legislation after admission." This decision, it is true, has to do with a condition of admission to the Union and not with a condition of a land grant, but there is no reason why the same principle should not apply.

From these decisions we may conclude that in order to be valid the condition of a land grant must be such as not to deprive a state of its equal position in the family of commonwealths. Let us examine the six conditions referred to above in the light of this principle.

Eight states, in return for various land grants, have undertaken not to interfere with the disposal of the public land by the United States. Clearly this stipulation has not encroached upon the powers of these states. The Constitution gives to Congress the power to dispose of the territory of the United States. It follows that no state can interfere with the exercise of that power. On this ground, in Pollard's Lessee v. Hagan,[27] the Supreme Court expressed the opinion that such a condition is valid.

Eight states have received land grants coupled with the requirement that they should not tax United States land. The decision of the Supreme Court in Van Brocklin v. Tennessee in 1886 settles the validity of this condition, for it was held in that case that irrespective of any compact no state can tax United States land.

Five states have received land grants upon the condition that they should not tax lands sold by the United States for five years after the day of sale. Does this deprive these states of their equal position? The Supreme Court has not definitely answered this question but from its attitude in analogous cases we may perhaps conclude that it would give a negative answer. There seems to be a reasonable relation between the power to dispose of the public lands and the power to exempt from taxation for a short term of years. Moreover, it is well settled that a state for a fair consideration may give up

[27] 3 *Howard*, 212.

its right to tax part of the property within its limits. If it can do so to a private corporation, why not to the United States? The land which it receives is a fair consideration for the exemption promised. But from either of these points of view the state retains its equal position. The case of the Kansas Indians[28] tends to support this view. It was there held that an agreement by the state of Kansas at the time of her admission to the Union to the effect that the general government should remain at liberty to make regulations respecting the Indians and the Indian lands within the state was binding on Kansas, and hence that exemption of the Indians from taxation did not violate the sovereign power of the state.

Five states have received land grants with the condition annexed that they should not tax bounty lands for a term of years. The same considerations apply to this condition as to the one preceding.

Nine states, in return for land grants, have agreed not to tax the lands of non-resident citizens of the United States higher than those of residents. So far as citizens of the various states are concerned this stipulation imposes no new duty. From the case of Ward v. Maryland[29] we learn that the clause of the Constitution providing that the citizens of each state shall be entitled to all the privileges and immunities of citizens of the several states guarantees to the citizens of every state equality of taxation throughout the United States.[30] But the requirement of the condition also includes United States citizens residing in the territories. Is there anything in the Constitution to prevent states not bound by this condition from taxing the land of such persons at a rate higher than the land of residents? Before the adoption of the Fourteenth Amendment there was not; but the clause of that amendment providing that no state shall deprive any person of liberty or property without due process of law or deny to any person within its jurisdiction the equal protection of the law will certainly be held to prevent discrimination in taxation on the ground of difference in place of residence. The Supreme Court, to be sure, has not settled the question. It has, however, in a dictum in McHenry v. Alford,[31] said that property of the same kind and under the same condition and used for the same purpose, can not be divided into different classes for purposes of taxation and taxed by a different rule simply because it belongs to different owners.

But these agreements were all made before the Fourteenth Amendment was adopted. Their validity must therefore be tested by the Constitution in its unamended form. Applying the same line of reasoning as in the case of the third and fourth conditions, must we not conclude that the states were not deprived of their equal position? If a state for a consideration can bargain away its taxing power over a private corporation or the property

[28] 5 *Wallace*, 756.
[29] 12 *Wallace*, 418.
[30] See also dictum to the same effect in Corfield *v.* Coryell, 6 *Federal Cases*, no. 3230, 552.
[31] 168 *United States*, 651.

owned by such a corporation without losing its equal position as a state, why can it not bargain away the lesser power to impose discriminating taxation upon lands owned by United States citizens residing in the territories?

Alabama is the only state which in return for a land grant agreed that its navigable waters should remain public highways and free from tolls. In the case of Pollard's Lessee v. Hagan,[32] referred to above, the court decided that this stipulation was valid, but valid, not because it constituted a compact, but because it was merely a regulation of commerce, a matter over which Congress has plenary authority.

In conclusion it may be said that the condition not to interfere with the primary disposal of the soil by the United States is valid, but amounts to nothing, because it imposes no duty to which the states would not have been subject without it. The same may be said of the condition relating to the taxation of United States lands and that providing for the free navigation of navigable waters. The conditions providing for the exemption of federal lands from taxation for a number of years after title has passed are valid although they impose on the states agreeing to them a duty to which they would not otherwise have been subject. The states are not deprived of their equal position, because any state for a fair consideration and to a limited extent can bargain away its power to tax; and this was precisely what these states did. The requirement not to tax lands of non-resident citizens of the United States higher than the lands of residents of the state imposed a new duty only in so far as residents of the territories and the District of Columbia were concerned. It probably was valid for the same reason as the condition referred to above.

It is proper to refer to one other matter at this point. What grants were given in return for the foregoing stipulations? Originally there were three: the school lands, the salt spring lands, and the five per cent fund.[33] To these were added the university lands and the public building lands in the grant to Indiana in 1816.[34] This measure became the model for nearly all subsequent grants.

[32] 3 *Howard*, 212.
[33] *Laws of the United States*, 3: 498.
[34] *Ibid.*, 6: 68-69.

CHAPTER VIII

FEDERAL LAND GRANTS FOR INTERNAL IMPROVEMENTS

At the opening of the nineteenth century better means of communication to link the West to the East had become a commercial and a political necessity. The leaders of the Democratic party, which was then in power, were heartily in favor of internal improvements, but did not think that Congress possessed the necessary power. Jefferson, who had been opposed to the plan in 1796,[1] became an advocate of internal improvements, and in 1808 recommended to Congress that a constitutional amendment be adopted giving the necessary authority.[2] Madison[3] and Monroe[4] took the same position.

But we have seen that strict construction views did not prevent the Democratic congress from making large appropriations for the construction of the Cumberland Road under color of advances from the two per cent fund set apart by the compacts with Ohio, Indiana, Illinois, and Missouri. At the same time the new states were receiving either three per cent or five per cent of the net proceeds from the sale of public lands for internal improvements. These were the entering wedges.

Land grants were soon to follow: These fall into four groups: land grants for wagon roads; land grants for the improvement of water transportation, including grants for canals, river improvement, and harbors; the general grant for internal improvements; and grants for railroads. These will receive separate consideration.

The first federal land grant for a public road was a grant of three sections to Ebenezer Zane, in 1796, upon condition that he build a road between Wheeling and Limestone in the state of Ohio.[5] The measure appears to have gone through Congress without discussion.[6] During the first two decades of the next century the federal internal improvement policy slowly gained headway in connection with the grants for the Cumberland Road, and the grant of the three per cent fund to the new states for roads and canals. Various other roads and canal projects came before Congress during the second decade. But no land grants were made before 1823.[7]

[1] Ford, *Writings of Thomas Jefferson*, 7: 64.
[2] *Ibid.*, 9: 225, 322.
[3] Richardson, *Messages and Papers of the Presidents*, 1: 567-568.
[4] *Ibid.*, 2: 191.
[5] *Laws of the United States*, 2: 533.
[6] *Annals of Congress*, 4 Congress, 1 session, 1228, 1292, 1338. Mr. Donaldson appears to have overlooked this grant. On page 257 of *The Public Domain* he says: "April 30, 1802, Congress made the first appropriation of public lands in favor of public improvements."
[7] *Annals of Congress*, 11 Congress, 1: 894; 2: 1443; 14 Congress, 1 session, 107; 2 session, 234; 15 Congress, 1 session, 1: 814.

In 1808, by the Treaty of Brownstown, various Indian tribes ceded to the United States a strip of land one hundred twenty feet in width extending from the rapids of the Miami, in Ohio, to the territory of Michigan, and all of the land within one mile on each side, in order that the government might establish a road to the territory of Michigan.[8] The next year the Senate made provisions for carrying the treaty into effect.[9] The House, however, failed to give its assent. But in 1823 a bill was passed which granted to the state of Ohio the land ceded to the United States in 1808, on condition that the state should build the road. The disastrous experiences of the War of 1812 had convinced Congress that it was expedient to have military roads connecting the settled portions with the exposed frontiers. Every speaker in the House emphasized this argument. The question of constitutionality was raised, but was met with the statement that this grant was dictated by military necessity and was therefore a proper exercise of the war power.[10] Cocke, of Tennessee, was the only man who entered the debate against the measure in the House. He argued that the Indians did not want the road, that there was therefore no obligation under the treaty of 1808, and that if Michigan needed the road it was proper that she should construct it.

The bill passed to a third reading in the house by a vote of 130 to 21. Every hostile vote, except one from Tennessee, came from a state which contained no federal land and which, therefore, would never be likely to receive a similar grant. Eleven of the twenty-one hostile votes were cast by Virginia and North Carolina.[11]

In order to show the development in subsequent acts it is necessary to point out the important features of this one.[12] It was a double grant. The one-hundred-twenty-foot strip was really a grant of a right of way, while the mile strip on each side was to defray the cost of the road. The state was not permitted to sell the land for less than one dollar and a quarter per acre, the minimum price of United States land. The time for the building of the road was fixed at four years; but the grant was absolute, the federal government relying upon the good faith of Ohio. There was no reservation of alternate sections for the United States.

In 1826 the Pottawatomies ceded to the United States for a road a one-hundred-foot-strip of land from Lake Michigan to the Ohio River, by way of Indianapolis, and one section of land for each mile of road. The same treaty provided that the legislature of Indiana should have the right to use the land for the construction of the road.[13] Congress granted

[8] *Ibid.*, 17 Congress, 2 session, 444.
[9] *Ibid.*, 11 Congress, 1: 518.
[10] *Ibid.*, 17 Congress, 2 session, 445, 547-552.
[11] *Ibid.*, 549, 552-553.
[12] *Laws of the United States*, 7: 118-119.
[13] *Ibid.*, 797.

the land to the state in 1827 subject only to the condition that it should be applied for the purposes stated in the treaty.[14]

The same year a proposition came before Congress to aid the Columbus and Sandusky Turnpike Company by subscribing for part of its capital stock. This proposition was defeated. Instead there was granted to the state of Ohio in trust for the above-named company every alternate section through which the road should run, and the section adjoining it on the west.[15] This provision was included on the motion of Hendricks, of Indiana, and Holmes, of Maine.[16] In itself it is not of great significance, but it receives importance from the fact that, in connection with a like provision in certain canal land grants passed at the same session, it set the precedent followed in subsequent grants for roads and canals and for the enormous railroad grants.

After these grants of the twenties there were no further wagon road grants until the time of the Civil War, when the importance of military roads was once more impressed upon Congress. In 1863 there was granted to the states of Michigan and Wisconsin to aid in the construction of a military wagon road from Fort Wilkins, Copper Harbor, Michigan, to Fort Howard, Green Bay, Wisconsin, every alternate section of land designated by even numbers for three sections in width on each side of the road. Each state was to build that portion of the road within its own borders and to receive the allotted land. Thirty sections of land might be sold at once; thirty more, when the governor should certify to the secretary of the interior that ten continuous miles had been completed, and so on. In case the road should not be completed in five years there were to be no further sales and the unearned land was to revert to the United States. The time, however, was extended, first to 1870, then to 1872, and finally two years more.[17] Congress also, in a general way, laid down the specifications for the road. It required a width of forty feet with a sixteen-foot roadway, sufficient drains and ditches, and such graduation and bridges as should permit of its use in all seasons of the year.[18] Many of these requirements were new to wagon road grants, but they did not originate here. They were modeled after the requirements of earlier canal and railroad land grants.

During the next six years additional grants were made to Michigan and Wisconsin and several large grants to the state of Oregon. The conditions were the same or similar to those of the grant of 1863.[19]

Oregon turned over her wagon road grants to private companies, which

[14] *Ibid.*, 583.
[15] *Laws of the United States*, 7: 603; 8: 36; *Congressional Debates*, 19 Congress, 2 session, 3: 376-380.
[16] *Congressional Debates*, 19 Congress, 2 session, 380.
[17] *Statutes at Large*, 15: 67; 16: 121; 17: 56.
[18] *Ibid.*, 12: 797-798.
[19] *Ibid.*, 13: 140, 141, 183, 184; 14: 86, 89, 409; 15: 340.

undertook to construct the roads. In 1889 some of the roads were still unfinished. Congress then instructed the attorney general to bring action to have that portion of the land coterminous with the uncompleted portion of the roads forfeited to the United States.[20]

According to the 1911 report of the commissioner of the general land office the time and amount of the grants and the location of the roads are as follows:[21]

Time of grant	Road	State	No. of acres certified or patented up to June 30, 1911
February 28, 1823	Miami of Lake Erie to Connecticut Western Reserve	Ohio	80,773.54
March 2, 1827	Lake Michigan to Ohio River	Indiana	170,580.24
March 3, 1863	Fort Wilkins, Copper Harbor, Michigan, to Wisconsin state line	Michigan	221,013.35
March 3, 1863	Fort Howard, Green Bay, Wisconsin, to Michigan state line	Wisconsin	302,930.96
July 2, 1864	Oregon Central Military Road	Oregon	666,655.78
July 4, 1866	Corvallis and Yaquina Bay	Oregon	81,895.25
July 5, 1866	Willamette Valley and Cascade Mountain	Oregon	861,511.86
February 25, 1867	Dalles Military Road	Oregon	556,827.04
March 3, 1869	Coos Bay Military Road	Oregon	105,240.11
		Total	3,047,428.13

Land grants for canals found a place in the federal system of land grants in the third decade of the nineteenth century. The Illinois River, a navigable tributary of the Mississippi traversing the state of Illinois from northeast to southwest, at one point approaches very close to the southern part of Lake Michigan. The state desired to connect the river with the lake by means of a canal, an enterprise which would link the waterway system of the Great Lakes to the Mississippi system. This led to the first step in the direction of federal land grants for canals. In response to a memorial from the state of Illinois praying for the grant of land,[22] ninety feet on each side of the proposed canal were given. The state was required to survey the route and place a map thereof in the hands of the secretary of the treasury within three years, complete the canal within twelve years thereafter, and continue to use the land for canal purposes. The penalty provided for non-fulfillment of these conditions was forfeiture of the land. The canal was to be a public highway for the use of the government of the

[20] *Ibid.*, 25: 850-852.

[21] *Laws of the United States; Statutes at Large;* Annual Report Commissioner General Land Office, *Reports of Department of Interior*, 1907, *Administrative Reports*, 1: 149, C. S., 5295; 1911, 135, C. S., 6222.

[22] *Annals of Congress*, 17 Congress, 1 session, 1: 32.

United States, and free from tolls for the passing of government property or troops. Every section through which the canal would pass was reserved from sale, and the state was authorized to use materials from the public lands adjacent for purposes of construction.[23] The requirement of a survey and the depositing of a map, the fixing of a time for completion, the provision that the canal should be a public highway for the use of the government, and the permission to use materials from the public domain are all important, for they will be found to recur in many subsequent grants.

A grant upon like conditions was made to Indiana two years later for a canal connecting the Wabash River, a tributary of the Ohio, with the Miami of Lake Erie.[24]

During the next administration the majority party, under the leadership of John Quincy Adams, was committed to a policy of internal improvement. The example of New York, which had just completed the Erie Canal, also had some influence. In 1827 Congress made the first large land grants for canal construction, one to Indiana and the other to Illinois. The measures passed the House without much discussion but were debated at length in the Senate. This discussion was centered on the Indiana grant, the purpose of which was to aid the state in connecting the waters of the Wabash with Lake Erie, and thence, by way of the Erie Canal and the Hudson River, with New York City and the markets of the eastern states.

As this was the first grant of land to defray the cost of canal construction it is worth while to consider the arguments pro and con. Smith, of South Carolina, objected that the West was receiving more than its share from the federal government; that it already had received aid for internal improvements in the grant of the five per cent fund for roads; that the grant would set a precedent which other new states would urge; and that the canal was not a toll-free canal. Finally, he said that he "was against this donation, not so much because he did not wish to see the State of Indiana assisted, as that this plan of giving to the States was fast gaining ground; and thus a measure which he thought unconstitutional was wearing into constitutionality by frequent repetition."[25] Holmes, of Maine, argued that inasmuch as the Ordinance of 1787 had provided that the navigable waters of the West should be public highways and forever free from toll, the canal should be a toll-free canal. He remarked "that his friends from the West would never want anything for the lack of asking."[26]

Hendricks, of Indiana, and Harrison, of Ohio, were the main supporters of the measure in the Senate. Hendricks referred to the influx of settlers and the increase in price of the adjacent land as a result of the Brownstown

[23] *Laws of the United States*, 7: 22.
[24] *Ibid.*, 295-296.
[25] *Congressional Debates*, 19 Congress, 2 session, 313, 314.
[26] *Ibid.*, 310-311.

Road and predicted like results from the proposed canal.[27] Harrison pointed out that the Northwest Ordinance did not apply to artificial waterways. He thought the canal, by making the markets of New York City accessible to the products of the West, would be of great benefit to both sections.[28] McKinley, of Alabama, said that he would vote for the measure because every state, by virtue of its sovereignty, was entitled to the land within its limits, and therefore Indiana was getting no more than her due.[29]

The bill was ordered to a third reading by a vote of 28 to 14. An analysis of this vote shows that it was strongly sectional. The new states of the West, both north and south of Mason and Dixon's Line, were all for the grant. The South Atlantic States were solid against it. The North Atlantic States were divided.[30]

The Congress of 1827 is the one which introduced the principle of reserving alternate sections for the federal government in land grants for internal improvements. The act as amended in the Senate upon motion of Holmes, of Maine,[31] provided for a grant of five sections in width on each side of the canal, reserving alternate sections to the United States. As soon as the route should be surveyed the governor or the person authorized by the state to superintend the construction of the canal was to determine what lands the state was entitled to and to report to the secretary of the treasury. As soon as the lands had been selected the state could sell and give a perfect title. The federal government had not yet learned that in order to get results it was advisable not to allow sales to proceed faster than construction. It was, however, provided that the canal must be begun in five years and completed in twenty, or else the state must pay to the United States the amount received for the lands disposed of. Following the precedent of the right of way grants of 1822 and 1824 it was provided that the canal should be a public highway for the use of the United States.[32]

The grant to Illinois of the same date was made for the same purpose as the grant of a right of way five years before, that is, to connect the Illinois River with Lake Michigan. The terms were precisely the same as in the grant to Indiana.[33] The vote in the House was 90 to 67.[34] Comparing this with the vote on the Indiana measure in the Senate, 28 to 14, it becomes apparent that land grants of this character were more popular in the Senate than in the lower house. This is explained by the comparatively greater strength of the new states in the upper house, where each of them could cast as many votes as one of the more populous states of the Atlantic border.

[27] *Ibid.*
[28] *Ibid.*, 312-313.
[29] *Ibid.*, 315-317.
[30] *Ibid.*, 3: 338.
[31] *Ibid.*, 337-338.
[32] *Laws of the United States*, 7: 585.
[33] *Ibid.*, 582-583.
[34] *Congressional Debates*, 3: 1512.

In 1828 there was a grant to Ohio to aid in extending the Miami Canal from Dayton to Lake Erie. This would form a third link between the Great Lakes and the Mississippi system. The act contained one provision which should be noted. It had been customary for the advocates of land grants for internal improvements to argue that grants of this character cost the government nothing, because the improvement would enhance the value of the lands remaining. Now it was provided that the minimum price of the alternate sections reserved should be raised to two dollars and a half, which was double the usual minimum.[35]

At the same time there was granted to the state of Ohio 500,000 acres for the purpose of aiding the state in the payment of debts which had been or should be contracted in the construction of canals within the state.[36] It is probable that it was the amount of this grant which determined the amount of the general grant for internal improvements in 1841.

In 1838 the territory of Wisconsin received a grant for the purpose of aiding in opening a canal from Lake Michigan to the Rock River, a tributary of the Mississippi.[37] In 1845 there was an additional grant to Indiana to secure the completion of the Wabash and Erie Canal from Terre Haute to the Ohio.[38]

Lake Superior and Lake Huron are connected by the St. Mary's River. But a twenty-foot fall made the river impassable. It was realized that a lock and canal by means of which vessels could avoid the falls would make this an important waterway. In 1852 Congress granted to the state of Michigan 750,000 acres to aid in the construction of such a canal.[39] In the year 1900 this canal was used by 18,144 vessels.[40]

In 1865 and 1866, 400,000 acres were granted to aid in building a canal from Lake Superior to Portage Lake. This canal pierces the northern point of the northern peninsula of Michigan and thereby shortens the distance from Lake Huron to the cities at the head of Lake Superior.[41] In 1866 there was a grant of 100,000 acres for a canal from Lake Superior to Lac La Belle, which would pierce the same peninsula a little farther north.[42] At the same time Wisconsin received a grant of 200,000, to aid in constructing a breakwater, harbor, and canal from Green Bay to Lake Michigan.[43] Such a canal, by cutting the northeastern peninsula of Wisconsin, would shorten the distance by water from cities on Green Bay and the Fox River to points on Lake Michigan.

These grants were made upon the condition that the canals should be

[35] *Laws of the United States*, 8: 118.
[36] *Ibid.*, 119.
[37] *Ibid.*, 9: 786.
[38] *Ibid.*, 10: 681-682.
[39] *Statutes at Large*, 10: 35.
[40] *Encyclopedia Americana*.
[41] *Statutes at Large*, 13: 519-520; 14: 81.
[42] *Ibid.*, 14: 80.
[43] *Ibid.*, 14: 30.

toll-free when used by the government, fixed a time when the canal must be completed, and imposed a penalty for failure to complete by the time prescribed. After 1852 the grant was no longer by sections but a grant of a fixed number of acres. Title passed as soon as the lands had been selected but, under all grants after 1845, it was subject to forfeiture in case of failure to complete the canal in the stipulated time.

Only the five states of the Northwest Territory have received land grants for canals. The amount of the grant can best be shown in tabular form.[44]

Date of grant	Canal	State	Total area
March 2, 1827	Illinois and Lake Michigan	Illinois	324,282.74
March 2, 1827 and March 3, 1845	Wabash and Erie	Indiana	1,480,408.87
May 24, 1828	Wabash and Erie	Ohio	265,815.45
May 24, 1828	Miami and Dayton	Ohio	438,301.32
May 24, 1828	Canals generally	Ohio	500,000.00
June 18, 1838	Milwaukee and Rock River	Wisconsin	138,995.99
April 10, 1866	Green Bay and Lake Michigan	Wisconsin	200,000.00
August 26, 1852	St. Mary's Ship	Michigan	750,000.00
March 3, 1865 and July 3, 1866	Portage Lake and Lake Superior Ship	Michigan	400,000.00
July 3, 1866	Lake Superior and Lac La Belle	Michigan	100,000.00
		Total	4,597,804.37

The great movement for better means of transportation also took the form of federal land grants to aid in the improvement of rivers. The first grant of this kind we made to Alabama in 1828. Four hundred thousand acres of land were given, to be applied to the improvement of the navigation of the Muscle Shoals and Colbert's Shoals in the Tennessee River, and such other parts of the river as the legislature might direct, the surplus, if any, to be applied to the improvement of the channels of the Coosa, Catawba, and Black Warrior rivers. The conditions were similar to those in canal grants of the same period. But one difference must be noted. The rivers were to be free from toll, not only to the United States, but to all of its citizens, unless Congress should authorize tolls to be levied. The work was to be done under the supervision of United States engineers.[45]

In 1844 one section of land was granted to the territory of Wisconsin to improve the navigation of Grant River at Potosi.[46] Two years later, in order to improve the navigation of the Fox and Wisconsin rivers and to connect them by a canal, three sections a mile were given along the Fox River from its mouth to the canal and along the canal to the Wisconsin River. One condition of this grant was new in federal land grant policy. It was pro-

[44] *Laws of the United States; Statutes at Large;* "Annual Report Commissioner General Land Office," *Reports of Department of Interior,* 1907, *Administrative Reports,* 1: 148, C. S., 5295.
[45] *Laws of the United States,* 8: 75; "Annual Report Commissioner General Land Office," *Reports of Department of Interior,* 1907, *Administrative Reports,* 1: 148, C. S., 5295.
[46] *Laws of the United States,* 10: 555.

vided that to begin with only enough land to produce $20,000 might be sold. Then, when one half of this sum had been expended, there might be an additional sale to the amount of $10,000; when this sum had been used, there might be a third sale, and so on. In each case, before there could be another sale, the governor must certify to the president that the money had been used in the manner prescribed.[47] The time for the completion of the canal was fixed at twenty years, but in 1867 a five-year extension was granted.[48] Under the grant of 1846 Wisconsin received 683,722 acres of land.[49]

The same year there was granted to the state of Iowa to aid in improvement of the channel of the Des Moines River one half of the unappropriated land within five miles of the river from its mouth to Raccoon Fork. The conditions of the grant were similar to those in the grant to Wisconsin.[50] The state received 1,161,513 acres under this grant; but only 321,422 acres were used for canal construction, the balance going to the Des Moines Valley Railroad.[51]

In 1868 Minnesota received a grant of 200,000 acres to aid the state in constructing a lock and dam at Meeker's Island, which was expected to make the river navigable between the mouth of the Minnesota and the Falls of St. Anthony.[52] No work was ever done by the state and under the terms of the grant the land reverted to the United States.

After the War of 1812 the national debt, which in 1815 had reached the sum of $127,000,000, fell year by year, till in 1835 it was all but extinguished.[53] Toward the close of the third decade of the nineteenth century it began to be a question what to do with the surplus revenue. At the same time several of the new states began to clamor for the cession of all the public lands within their limits.[54] The matter came before the outgoing Congress in 1829. The committee to which the question was referred advised against the transfer because it would tend to produce chaos in the methods of disposing of the land, hostility between state and state, and speculation and corruption in the state legislatures. But the committee recommended the annual distribution among all of the states of the net proceeds derived from the sale of public lands.[55] No further action was taken at this time. The next year the matter was warmly debated in the House, and a committee was again appointed to investigate.[56] There the matter rested until 1832, when the committee on manufactures, of which

[47] *Statutes at Large*, 9: 83.
[48] *Ibid.*, 15: 20.
[49] "Annual Report Commissioner General Land Office," *Reports of Department of Interior, 1907, Administrative Reports*, 1: 148, C. S., 5295.
[50] *Statutes at Large*, 9: 77.
[51] "Annual Report Commissioner General Land Office," *Reports of Department of Interior, 1907, Administrative Reports*, 1: 148, C. S., 5295.
[52] *Statutes at Large*, 15:169.
[53] Sato, "The Land Question in the United States," Johns Hopkins University, *Studies in Historical and Political Science*, 4: 153.
[54] *Reports of Committees*, 20 Congress, 2 session, C. S., 190, no. 95, 8.
[55] *Ibid.*, 29 Congress, 2 session, C. S., 190, no. 95, 9-10.
[56] *Congressional Debates*, 6: pt. 1, pp. 537-540.

Henry Clay was chairman, was instructed to inquire into the expediency of reducing the price of the public lands and of ceding them to the several states within which they were situated.[57] The selection of this committee, instead of the committee on public lands, to which the matter would ordinarily have gone, was a political trick of Clay's opponents the object of which was at once apparent. Clay protested, but without avail.[58] "Whatever emanated from the committee," he said later, "was likely to be ascribed to me. If the committee should propose a measure of great liberality toward the new states, the old states might complain. If the measure should lean toward the old states, the new might be dissatisfied. And if it inclined to neither class, but recommended a plan according to which there would be distributed impartial justice among all the states, it was far from certain that any would be pleased."[59] In a speech before the Senate, Clay referred to the extraordinary procedure in this way: "I have nothing to do with the motives of honorable Senators who composed the majority by which that reference was ordered. The decorum proper in this Hall obliges me to consider their motives to have been pure and patriotic."[60]

But the unwelcome task was carried through by Clay with his usual efficiency. There were two questions before the committee, the reduction in the price of the public lands and the distribution of the lands to the new states. The first lies outside of the scope of this study. The second calls for further examination.

After emphasizing the magnitude of the proposition by pointing out that it might ultimately involve the transfer to existing and future states of 1,090,871,753 acres of land, with an aggregate value of $1,363,589,691 at the minimum price of one dollar and a quarter an acre, the committee rejected the proposed plan for the following reasons: 1. If the transfer should be made in return for a fair equivalent it would establish a debtor and creditor relation between the new states and the nation dangerous to the permanence of the Union. 2. If the proposed cession should be made for a price merely nominal it would be contrary to the express condition of the deeds of cession of the western land, which provided that the lands should be used for the common benefit of all the states. Such a cession would manifestly be unfair to the old states and very far from equitable to the new, for generally the new state with the smallest population contained the largest area of untaken land. 3. The United States ought not to give up a resource on which it might fall back in times of war or national adversity.

But, in view of the prospect of a surplus in the federal treasury, the committee recommended that each public land state should receive ten per cent of the net proceeds from the sales of public lands within its borders,

[57] *Ibid.*, 8: pt. 2, ap., 112.
[58] *Ibid.*, 8: pt. 1, p. 870.
[59] Schurz, *Henry Clay*, 1: 368-369.
[60] *Congressional Debates*, 8: pt. 1, p. 1095.

and that the remainder should be distributed among all of the states according to their federal representative population. The measure was to be operative for only five years and only in time of peace.[61]

The committee on public lands, to which the matter was referred after the committee on manufactures had made its report, submitted a counter-plan.[62] This did not prove acceptable and Clay finally succeeded in forcing his bill through the Senate.[63] The House, however, by a margin of three votes, postponed the measure till the next session.[64] The following year a bill of a similar character passed the Senate[65] and the House gave its consent one day before the end of the session.[66] But President Jackson prevented the measure from becoming a law by the use of his "pocket veto." At the opening of the next session he returned the bill to Congress with his reasons for withholding his concurrence. In his opinion the bill violated the conditions of the acts ceding the western territory by making a larger grant to the new states than to the old, and violated the Constitution by requiring the ten per cent grant to be devoted to education and internal improvements, matters outside of the scope of the powers of Congress.[67]

The matter of the distribution of the public lands or of the proceeds from the sales continued to agitate Congress at every session.[68] Clay introduced his measure in 1834,[69] again in 1835,[70] and once more in 1836.[71] Three times the measure passed the Senate.[72] In 1832, the occasion referred to above, both houses concurred.

In 1841 the proposition was combined with a general preëmption bill. Benton, of Missouri, now attacked it as a Whig party measure, a tariff bill in disguise aiming to empty the national treasury in order to have a pretext to fill it by loans and taxes. The ever-recurring arguments of unconstitutionality and violation of the deeds of cession were again employed. The bill was ably championed by Clay.[73] It passed the House in the midst of a scene of great confusion, a furious thunder storm without forming a fitting background for the tumult within. The vote was close, 116 to 108.[74] The Senate signified its approval by a vote of 28 to 23.[75]

The act carried two distinct grants: a money grant and a grant of land. The first was the old distribution proposition which had been before Congress for a decade. Each public land state,[76] in addition to the five per cent

[61] *Senate Documents*, 4, no. 323, 18-31, 23 Congress, 1 session, C. S., 241.
[62] *Congressional Debates*, 8: pt. 3, ap., 118.
[63] *Ibid.*, pt. 1, p. 1174.
[64] *Ibid.*, pt. 3, p. 3853.
[65] *Ibid.*, 9: pt. 1, p. 235, p. 809.
[66] *Ibid.*, pt. 2, p. 1919.
[67] *Senate Documents*, 1, no. 3, 23 Congress, 1 session, C. S., 238.
[68] *Congressional Globe*, 6: 353; 7: 171; 9: 112.
[69] *Congressional Debates*, 11: pt. 1, p. 15.
[70] *Ibid.*, 12: pt. 1, pp. 48-52.
[71] *Ibid.*, 13: pt. 1, p. 20.
[72] *Ibid.*, 8: pt. 1, p. 1174; 9: pt. 1, p. 235; 12: pt. 3, p. 3580.
[73] *Congressional Globe*, 10: 314, 387, 388.
[74] *Ibid.*, 156.
[75] *Ibid.*, 388.
[76] Ohio, Indiana, Illinois, Alabama, Missouri, Mississippi, Louisiana, Arkansas, Michigan.

grant, received ten per cent of the net proceeds from the sales of public land within its borders. The balance was distributed to the twenty-six states, the territories of Iowa, Wisconsin, and Florida, and the District of Columbia, according to their "respective federal representative population." For the District of Columbia education was named as the purpose of the grant. The other grantees were left to dispose of their shares as they would. Debts due the United States were to be offset before any state or territory received its distributive share.[77]

There were two circumstances under which this part of the act was to become inoperative: in case of war and in case Congress should increase the rate of duty on any goods imported above the rates of the tariff act of 1833. The purpose of the first provision is obvious; the second was a concession to the anti-tariff men.

But the matter did not stay settled. The next year found the federal treasury nearly empty and face to face with a deficit, while United States bonds could be sold only at a great discount. The Whig Congress and the Democratic president were agreed that the rates of the compromise tariff of 1833 must be increased. But Congress was unwilling to allow its pet measure, distribution of the proceeds from the public lands, to cease to operate, while President Tyler considered distribution inexpedient, and perhaps unconstitutional, at a time when it necessitated increased taxation. In the summer of 1842 he vetoed two tariff bills, in both cases because Congress permitted distribution to continue although the tariff was raised above the twenty per cent level. Congress then passed a separate tariff measure,[78] which the president approved, and a separate bill authorizing distribution, which he retained but did not sign, and thus prevented from becoming a law.[79]

In this way, after having been in operation for six days less than one year, the distribution measure was suspended. This suspension proved to be permanent, for the tariff never again went back to the twenty per cent level.[80] The total amount distributed under the act of 1841 was about $630,000.[81]

The third important feature of the act of 1841 was the grant of 500,000 acres of land to each public land state, except Tennessee, "for purposes of internal improvement." This was subject to the limitation that states which had already received grants for this purpose were to receive no more than enough to bring their total grant to 500,000 acres. Future states were included in the grant upon the same conditions. In the selection of the

[77] This, however, did not apply to Revolutionary War debts or deposits of 1836.
[78] *Laws of the United States*, 10: 346.
[79] Richardson, *Messages and Papers of the Presidents*, 4: 180-193. *Executive Documents*, 2, no. 12, 27 Congress, 3 session, C. S., 419.
[80] Taussig, *Tariff History of the United States*.
[81] *Senate Executive Documents*, 7, no. 64, 50 Congress, 1 session, C. S., 2510.

lands, which was left to the state legislature, no state was permitted to go beyond its own state lines.[82]

The internal improvement land grant was continued until the admission of Colorado in 1875, nineteen states receiving the grant. After that time other grants have been given to the new states.[83] These have been discussed in a former chapter.

Five states have asked for permission and have been authorized to devote their internal improvement lands to the support of common schools. Wisconsin[84] and Alabama,[85] in 1848; Iowa,[86] in 1849; Nevada,[87] in 1866; and Oregon,[88] in 1871.

The federal policy of land grants for internal improvements was the result of a gradual evolution. A precedent was set in 1796 by a grant of three sections of land to a private individual for opening a road in Ohio. The first important step was taken by Congress in 1802 and 1803 by granting the three per cent fund to the state of Ohio for the building of roads in the state and by setting aside the two per cent fund for the building of roads leading to the state. Then came the canal right of way grants of 1822 and 1824, the military road grant of 1823, and several road, canal, and river improvement grants during the administration of John Quincy Adams. The fourth decade of the century was one long struggle between the Whigs, under the leadership of Henry Clay, trying to secure the distribution of the proceeds from the sale of the public lands, to be used in part for internal improvements, and the Democrats, who as a party were opposed to distribution. This struggle resulted in the compromise measure of 1841, which carried a grant of 500,000 acres to each public land state for internal improvements, as well as a provision for the distribution of the proceeds. The latter, however, was hemmed about with so many conditions that it was operative for less than a year. This was followed by two important land grants for river improvements in 1846.

In the meantime the policy was gradually being extended to the railways. In 1825 the House of Representatives instructed its committee on roads and canals to inquire into the utility of railways and to report upon the comparative cost of construction of canals and railways. During the next two decades the comparative advantages of railroads and canals were considered by nearly every Congress.[90] A very significant step in the evolution of

[82] *Laws of the United States*, 10: 157.
[83] *Laws of the United States; Statutes at Large.*
[84] *Statutes at Large*, 9: 233.
[85] *Ibid.*, 281-282.
[86] *Ibid.*, 349.
[87] *Ibid.*, 14: 85.
[88] *Ibid.*, 16: 595.
[89] This topic cannot receive detailed consideration here. It has been the subject of two doctor's theses at the University of Wisconsin, the first by John Bell Sanborn, *Congressional Grants of Land in Aid of Railroads;* the second by Lewis Henry Haney, *A Congressional History of Railways in the United States to 1850.* This has been supplemented by the same author by *A Congressional History of Railways in the United States from 1850 to 1885.*
[90] Haney, "Congressional History of Railways in the United States to 1850," in University of Wisconsin, *Bulletin*, Economics and Political Science Series, 3: 216-223.

railway land grants was taken in 1830. The practicability of the railway had then been demonstrated and construction had just commenced in the United States.[91] That year the state of Ohio was authorized to use the canal grant of 1828 for a railroad to connect Dayton with Lake Erie.[92] Three years later the state of Illinois was given the option of using the canal grant of 1827 either for its original purpose or for a railroad from the Illinois River to Lake Michigan.[93] These measures, however, can not be classed as railway land grants, for they gave no additional land.

The second step was taken in 1834 by the grant of a right of way through property of the United States at Harper's Ferry to the Winchester and Potomac Railroad.[94] The next year three important grants were made for rights of way through the public domain in Florida and Alabama.[95] In tracing the transition from canal grants to railroad grants it is worth while to note that the conditions of the grants of 1835 appear to have been copied from the grant of 1822 for a canal right of way.

Numerous special grants followed.[96] These occupied the time of Congress, and as they in time came to be given almost as a matter of course it was argued that it would be better to have a general law.[97] Such a measure was passed in 1852. The act granted a right of way one hundred feet in width to all railroad and plank road and macadamized turnpike companies then chartered or that should be chartered within ten years, through any public land of the United States over which the legislatures of the state should authorize the construction of a road. In cases where deep excavation or heavy embankment was necessary, two hundred feet might be taken.

The companies were authorized to take from the public lands, in the vicinity of the roads, all such materials of earth, stone, or wood, as might be necessary or convenient for the first construction of the roads through the public lands. A provision of this character in a subsequent act gave rise to an interesting controversy. What lands were in the vicinity of the road within the meaning of the act? The Supreme Court held that the act treated the railroad as a unit and that timber might be taken from the public land at one point on the road and used for construction purposes at any other point.[98]

Sites for depots and watering places were also given. Such sites were

[91] Sanborn, "Congressional Grants of Land in Aid of Railroads," in University of Wisconsin, *Bulletin*, Economics, Political Science, and History Series, 2: 16.

[92] *Laws of the United States*, 8: 282. Lewis Henry Haney, in his doctor's dissertation on "Congressional History of Railways in the United States to 1850," in University of Wisconsin, *Bulletin*, Economics and Political Science Series, 3, overlooks the act of 1830. He states on page 360 that "in 1833 Congress first authorized the use of a donation of public land for railway purposes." Donaldson has made the same mistake. (See *The Public Domain*, p. 261). John Bell Sanborn also appears to have overlooked the act of 1830, for he does not refer to it in his doctor's dissertation on "Congressional Grants of Land in Aid of Railroads," University of Wisconsin, *Bulletin*, Economics, Political Science, and History Series, 2.

[93] *Laws of the United States*, 833.

[94] *Ibid.*, 9: 188.

[95] *Ibid.*, 241-242.

[96] *Ibid.*; *Statutes at Large*.

[97] Haney, *Congressional History of Railways in the United States to 1850*, 337.

[98] United States *v.* Denver, etc., Ry. Co., 150 *United States*, 1.

not to contain more than "one square acre" and were not to be located nearer to each other than ten miles along the line of the road. Maps of the road had to be transmitted to the commissioner of the general land office.

It was further provided that the grants should cease to be operative unless the roads should be begun within ten and finished within fifteen years after the passage of the act. In case a road should be discontinued the land was to revert to the United States. The act did not apply to land used by the government or reserved for other purposes.[99]

In 1862 this act was extended for five years.[100] It was replaced in 1875 by an act which increased the grant for a right of way to one hundred feet on each side of the central line of the road, and the grant for depot sites and water stations to twenty acres. This act is still in force. It applies to any railroad company organized by Congress or under the laws of any state or territory as soon as it has filed with the secretary of the interior a copy of its articles of incorporation and proof of organization.[101] Like the grant of 1852 the act applies only to the unreserved portion of the public domain. The grants after 1875 have been special grants of the right of way through reservations of various kinds.

From 1830 to 1841 there was not a session of Congress which passed without some mention of land grants for railroads. In 1838 the Senate passed a bill making a grant to Indiana for this purpose; but the attitude of the House proved to be hostile. From 1841 to 1845 little attention was paid to land grants of this character.[102] During the next five years several grants were authorized by the Senate, but all failed in the House, owing, perhaps, to the strength of the eastern states in the lower chamber.[103]

In 1850, however, a bill was presented which combined enough interests to secure a majority in both houses. The measure provided for a grant to the state of Illinois of every even-numbered section for six sections in width on each side of a proposed road from the southern terminus of the Illinois River and Lake Michigan Canal to a point at or near the junction of the Ohio and the Mississipi, with a branch line to Chicago. Similar grants were made by the same act to Alabama and Mississippi to aid in continuing the road from the mouth of the Ohio to Mobile. As there were no public lands in Tennessee and Kentucky, states which such a road must traverse, the grant, while nominally one for a single continuous road connecting the Great Lakes with the Gulf, was really one for two separate roads.

As this is the first railroad land grant it is of interest to note its provisions and to determine their origin. One hundred feet were granted for a

[99] *Statutes at Large*, 10: 28.
[100] *Ibid.*, 12: 577.
[101] *Ibid.*, 18: 482.
[102] Haney, "Congressional History of Railways in the United States to 1850," in University of Wisconsin, *Bulletin*, Economics and Political Science Series, 3: 354-362.
[103] Sanborn, "Congressional Grants of Land in Aid of Railroads," in University of Wisconsin, *Bulletin*, Economics, Political Science, and History Series, 2: 21-23.

right of way. This provision can be traced to the grant of a right of way for a canal in 1822. The grant of alternate sections was first used in 1827 in connection with canal grants and a grant for a military road. In place of lands disposed of other lands could be selected within fifteen miles of the road. The fixing of an exact limit beyond which no selection could be made was a new provision. It was provided that construction should commence at the northern and the southern termini of the main line in Illinois at the same time and continue south and north until the completion of the road. Then the branch line might be built. A similar outline of the order of work appeared in the river improvement grant to Alabama in 1827. There was a provision that the land should be disposed of only as the work progressed. This was similar to the requirement in the Fox and Wisconsin River grant of 1846, but did not go as far as its model. Sections remaining to the United States were not to be sold for less than double the minimum price, a provision which had been in use since the grant of 1828 for the construction of the Miami and Lake Erie Canal. There was the usual provision that the road should be free from toll for the transportation of federal property and federal troops. This requirement had been included in canal, road, and river improvement grants since 1822. If not completed within ten years the state was to pay to the federal government the amount received for the land sold and the land unsold was to revert to the United States, a provision copied from the land grants for canals. Finally, it was provided that United States mail should be transported at such price as Congress might direct. This was the second and the last new provision.[104] It is clear that the policy of land grants for railroads entered upon by Congress in 1850 was not altogether a new departure, but only one more step in an evolution which had been going on for half a century.

An analysis of the final vote on this measure in the Senate shows that the line of cleavage was rather between the states that contained no public land and the public land states than a division on party lines. This is undoubtedly accounted for by the fact that the latter were either the beneficiaries of the act or expected to receive similar grants in the future. Of twenty-six votes for the measure eighteen were cast by senators from public land states, while of fourteen votes against the measure only two came from this group. One of these was cast by Chase, of Ohio, the only Free-soiler who voted, and the other by Yulee, of Florida, who for years had opposed land grants for internal improvements. On party lines the vote stood as follows: for the measure, eighteen Democrats and eight Whigs; against the measure, six Democrats, seven Whigs, and one Free-soiler.[105]

Even though the precedent had now been established there continued to

[104] *Statutes at Large*, 9: 466-467.
[105] *Congressional Globe*, 31 Congress, 1 session, 904.

be a great deal of opposition to further grants until 1856.[106] Then followed a decade of reckless land grants. The country went railroad mad and Congress but reflected the general craze for immediate development of rapid means of communication. The Civil War also served to emphasize the importance of the railroad for military purposes and was one factor in extending the policy to the Pacific roads. The first grant to a Pacific railroad was made to the Union Pacific in 1862.[107] This was also the first grant to a railroad corporation as distinguished from grants to states.

But public opinion was swinging the other way. The last railroad land grant to a state was made to California in 1867, the last to a railroad corporation, to the Texas Pacific in 1871.[108] The Granger movement was having its effect. Congress came to feel that lands had been given with too lavish a hand and the interests of the homestead settler received more and more consideration.[109]

The railroad land grant of 1850 carried a donation of every alternate section within six miles of the road. This amounted to six square miles of land, or 3,840 acres, for each mile of railroad. In case the sections granted had been disposed of other land within fifteen miles of the road might be selected. In 1863, in the grant to Kansas, the amount was increased to every alternate section within ten miles of the road, and the range of selection was extended to twenty miles. The reason assigned for the change by the advocate of the grant was that all the valuable lands near the Missouri River had been taken for Indian reservations or by settlers and that therefore lands of small value hundreds of miles west of the Missouri would have to be selected.[110] This was a very important change, for it was followed in many subsequent grants[111] and many earlier grants were increased to ten sections a mile.[112]

In 1864 the grant to the Union Pacific and other transcontinental roads was increased to every alternate section within twenty miles of the road for those parts of the road passing through the territories.[113] This amounted to twenty square miles of land for each mile or forty acres for each rod of road. In 1864, in the grant to the Northern Pacific and in 1866, in the grants to the Atlantic and Pacific, and the Southern Pacific the amount was increased to forty sections for each mile of road in the territories and half that amount in the states.[114]

Of the eighteen public land states that had entered the Union prior to the time when land grants for railroads were abandoned, thirteen received

[106] Haney, "A Congressional History of Railways in the United States from 1850 to 1885," in University of Wisconsin, *Bulletin*, Economics and History Series, 6: 15.
[107] *Statutes at Large*, 12: 489-498.
[108] *Ibid.*, 16: 573-577.
[109] *Congressional Globe*.
[110] *Ibid.*, 37 Congress, 3 session, 1158.
[111] *Statutes at Large*, 13: 64, 73; 14: 87, etc.
[112] *Ibid.*, 13: 74, 521.
[113] *Ibid.*, 358.
[114] *Ibid.*, 367; 14: 299.

grants of land for railroads. Of the other five, Ohio and Indiana had received an equivalent in grants for canals, Oregon in grants for military roads, and Nebraska and Nevada in the grants to the Pacific railways.

Most of the region west of Missouri was still in the territorial stage at the time of the railroad land grants. These western territories did not receive grants, but the grants to the Pacific railways secured for the West what the grants to the states secured for the central part of the Mississippi Valley and the Gulf coast. In fact the difference was merely nominal, for the states invariably turned over their grants to railroad corporations.

June 30, 1911, there still remained for adjustment, claims for 29,000,000 acres of railroad lands.[115] So far as the claims have been adjusted the grants to states are as follows:[116]

	Acres
Alabama	2,746,400.41
Arkansas	2,562,095.30
Florida	2,205,146.66
Illinois	2,595,133.00
Iowa	4,929,758.26
Kansas	4,633,760.73
Louisiana	463,746.78
Michigan	3,133,176.23
Minnesota	8,028,999.95
Mississippi	1,075,345.02
Missouri	1,837,728.17
Wisconsin	3,649,749.15
Total	37,860,300.39

So far as adjusted, the grants to corporations are as follows:[117]

	Acres
Union Pacific	11,930,685.95
Central Pacific	5,842,717.72
Central Pacific (successor by consolidation with Western Pacific)	458,147.97
Central Branch Union Pacific	223,080.50
Union Pacific (Kansas Division)	6,175,660.63
Union Pacific (successor to Denver Pacific Railway Company)	807,564.76
Burlington and Missouri River in Nebraska	2,374,090.77
Sioux City and Pacific (now Missouri Valley Land Company)	42,610.95
Northern Pacific	33,279,866.99
Oregon Branch of the Central Pacific	3,154,994.16
Oregon and California	2,765,677.10
Atlantic and Pacific (now Santa Fe Pacific)	4,280,502.45
Southern Pacific (main line)	3,677,509.83

[115] "Annual Report Commissioner General Land Office," *Reports of Department of Interior*, 1911, *Administrative Reports*, 1, 93, C. S., 6222.

[116] *Ibid.*, 132-134. Mr. Sanborn, on page 50 of his monograph on "Congressional Grants of Land in Aid of Railroads," University of Wisconsin, *Bulletin*, Economics, Political Science, and History Series, 2, states that by the close of 1853 railroad grants had been made "to an amount estimated at 8,000 acres." Mr. Donaldson, however, to whom Mr. Sanborn refers, gives 8,000,000 acres as the amount.

[117] "Annual Report Commissioner General Land Office," *Reports of Department of Interior*, 1911, *Administrative Reports*, 1, 134, C. S., 6222.

Southern Pacific (branch line)	1,451,281.08
Oregon Central	128,618.13
New Orleans Pacific	1,001,783.27
Total	77,594,792.26

The total grant to states and corporations so far as adjusted is 115,455,-093.65 acres. If we add to this the 29,000,000 acres claimed by the railway companies but not yet adjusted, the total reaches about 145,000,000 acres, an area as great as the total expanse of the states of Michigan, Wisconsin, Illinois, Indiana, and one half of Ohio, and exceeding the total homestead entries made up to June 30, 1911, by 21,000,000 acres.[118]

The national government has exercised a greater degree of control over land grants for railroads than over other grants. This exercise of authority has taken many forms, but has in general followed the line of development indicated in the canal grants. The grants fixed the time when construction had to be completed.[119] Generally the period named was ten years, but extensions were given in many cases.[120] Some of the later grants fixed not only the time of construction but also the minimum amount that must be completed each year. Thus the California grant of 1867 provided that after the second year ten miles of road must be finished each year.[121] Such a provision was included in most of the corporation grants.[122]

In regard to the manner of construction nothing was said in the early grants to states and very little in any state grant. For the grants to corporations the requirements of the Northern Pacific grant of 1864 are typical. These were as follows: "That said Northern Pacific Railroad shall be constructed in a substantial and workmanlike manner, with all the necessary draws, culverts, bridges, viaducts, crossings, turnouts, stations, and watering places, and all other appurtenances, including furniture, and rolling stock, equal in all respects to railroads of the first class, when prepared for business, with rails of the best quality, manufactured from American iron. And a uniform gauge shall be established throughout the entire length of the road. And there shall be constructed a telegraph line of the most substantial and approved description to be operated along the entire line."[123]

Nearly all the railroad grants to the states provided that the road should be a public highway for the use of the United States without toll for the transportation of government property and troops. This provision became important during the Civil War. It proved so burdensome, however, to the Missouri railways as a result of the destruction of bridges and portions

[118] *Ibid.*, 127, 129.
[119] *Statutes at Large*, 10: 303.
[120] *Ibid.*, 13: 137, 569; 14: 78, 355, 356; 15: 80; 19: 405.
[121] *Ibid.*, 14: 549.
[122] *Ibid.*, 241, etc.
[123] *Ibid.*, 13: 368.

of the road by the hostile armies, that Congress undertook to pay a reasonable charge for the carrying of troops.[124]

The same provision gave rise to a controversy as to whether the railways must give the free use of their trains as well as of the roadways. In 1874, in the appropriation for the army, Congress provided that no part of the money should be used to pay for transportation on land grant railroads, but declared that nothing in the act should prevent the bringing of a suit in the Court of Claims to recover the charges for such transportation. A test case was brought by the Lake Superior and Mississippi Railroad Company, which finally brought the question before the Supreme Court. The court held that the early legislation had treated the railroad as a highway upon which the public might travel with its own vehicles. Therefore, the provision that a railroad should be a public highway for the use of the government gave to the United States the right to demand the free use of the roadway but not of the company's trains.[125] In 1881 Congress provided for compensation on the basis of half the usual rates.[126]

The grant of 1850 provided that the lands should be sold only as fast as construction progressed. In 1856 Congress was more specific. It was provided that one hundred twenty sections might be sold; when twenty miles had been constructed, one hundred twenty more, and so on. In the later grants the order was reversed. A certain section of the road must first be built. Then patents might be issued for the lands opposite, and so on.[127]

Another matter of considerable importance was the examination of the railways under construction to determine whether the requirements of the grants had been complied with. In this connection, also, there was a change of policy. In the first grants there was no provision in regard to this matter. In 1857, in the grants to Minnesota, the duty of certifying to the satisfactory completion of the twenty-mile sections was imposed on the governor.[128] This precedent was followed in subsequent state grants until 1867, when the government assumed a more direct control by leaving the matter to its own officers, the Pacific railway commissioners. These had been appointed to examine the finished sections of the Pacific railways. In Farnsworth v. Minnesota and Pacific Railroad Company the Supreme Court held that under a grant of this character the territory of Minnesota could not convey to a railroad company title to railway land before the company had complied with the conditions of the grant.[129]

Forfeiture was the penalty for violation of the conditions of the grant in regard to the rate of construction and the time for the completion of the road. But the land did not revert to the United States by the mere fact

[124] *Ibid.*, 12: 614-615.
[125] Lake Superior and Mississippi Railroad Co. *v.* United States, 93 *United States*, 442.
[126] *Statutes at Large*, 21: 348.
[127] *Ibid.*, 11: 196.
[128] *Ibid.*
[129] Farnsworth et al., Trustees *v.* Minnesota and Pacific Railroad Co. et al., 92 *United States*, 49.

that some condition was not fulfilled. The forfeiture must be declared by Congress or by the courts.[130]

Even before land grants for railroads had ceased Congress began to take action.[131] In 1867 an attempt was made to declare the forfeiture of the lands granted to the disloyal states, but without success.[132] The first act was passed in 1870. It declared the forfeiture of the land granted to Louisiana to aid in the construction of the New Orleans, Opelousas, and Great Western Railroad.[133] During the next two decades many acts of this kind were passed. The forfeiture, however, was extended only to lands coterminous with the unfinished portions of the road. In 1890 a measure was enacted which was general in its application. All railroad lands granted to any state or corporation opposite unfinished portions of the roads were restored to the public domain.[134]

The power of declaring a forfeiture is not an arbitrary one. In the case of Atlantic and Pacific Railroad Company v. Mingus the Supreme Court held that it is for the courts to say whether there has been, upon either side, a failure to perform.[135]

But even when forfeiture had been declared the adjustment of the grants dragged along very slowly, for one reason because all the public land was not surveyed. Some of the railroad companies, however, were bound by their grants to bear the cost of surveying the land. In 1910 these were required, within ninety days of demand by the secretary of the interior, to advance the amount necessary to pay the cost of this survey. If any company fails to comply, its grant is forfeited.[136]

The right of way grants were not included in the forfeiture acts referred to above. But in 1906 Congress provided that the provisions of the general right of way grant of 1875 should be enforced against all roads except where construction was progressing in good faith at the time of the approval of the act.[137]

There is one more land grant that may, perhaps, be classed among the internal improvement lands which is of sufficient importance to call for consideration. This is the grant of desert land to the western states. Under the Carey Act of 1894 the secretary of the interior is authorized to enter into an agreement with each state in which there is desert land to donate to such state such desert land as the state may cause to be irrigated, reclaimed, and occupied, up to an amount not exceeding one million acres. No state is permitted to sell more than one hundred sixty acres of such land to one

[130] United States *v.* Tennessee and Coosa Railroad, 176 *United States*, 242, 253.
[131] *Statutes at Large*, 16: 277.
[132] Sanborn, "Congressional Grants of Land in Aid of Railroads," in University of Wisconsin, *Bulletin*, Economics, Political Science, and History Series, 2: 68.
[133] *Statutes at Large*, 16: 277.
[134] *Ibid.*, 26: 496.
[135] 165 *United States*, 413, 434.
[136] *Statutes at Large*, 36: 834.
[137] *Ibid.*, 34: 482.

person. Any surplus derived from the sale of land above the cost of reclamation is to be held as a trust fund and applied to the reclamation of other desert land within the state.

A state desiring to take advantage of this act must ask for the segregation of a definite tract of land and present a plan for reclaiming it. If this plan meets with the approval of the department of the interior, the land is set apart from the public domain and the state is given ten years in which to reclaim it.

Many states have taken advantage of the government's offer. Up to June 30, 1911, these states had reclaimed and secured patents to 388,403 acres and 3,193,314 acres had been set apart for reclamation.[128]

[128] *Ibid.*, 28: 422; "Annual Report Commissioner General Land Office," *Reports of Department of Interior*, 1911, *Administrative Reports*, 1: 92, C. S., 6222.

CHAPTER IX

THE SWAMP LAND GRANTS

Most of the land bordering on the southern part of the Mississippi and on the adjacent portions of its tributary streams is low and much of it marshy, forming great malarial districts and fever and ague plague spots. Much of it, however, is valuable for agricultural purposes when reclaimed. It was this feature in the topography of the public land states bordering on the lower half of the Mississippi which led to the swamp land grants.

As early as 1826 Thomas W. Benton, of Missouri, with a view to the cession of the land to the states, introduced a resolution into the United States Senate calling upon the executive department for information concerning the swamp and overflowed land in Missouri and Illinois.[1] Although this was at the time when land grants for internal improvements were coming into favor, Congress was not ready for so far-reaching a step.

There followed a twenty-three year period during which the attention of Congress was centered on land grants for other purposes. But in 1846 the matter came up again in the Senate on motion of Ashley, of Arkansas, calling upon the secretary of the treasury for information regarding the area and location of the lands in Arkansas subject to overflow, together with an estimate of the amount required to protect the lands from the flood waters of the river and a plan for accomplishing that object.[2] This apparently contemplated the construction of levees by the federal government and not a grant of land. The treasury department did not respond. The next year Ashley secured the passage of a second resolution, demanding an explanation of the delay.[3] It then developed that the information could not be given without a topographical survey.[4]

In 1848 Borland, of Arkansas, introduced into the Senate a bill granting to the state for purposes of education, internal improvement, and other uses, certain lands subject to overflow. He later agreed to extend the application of the measure to all the public land states. The bill was discussed but the session ended before it came to a vote.[5] It is interesting to find that Calhoun had a counter-plan under which the work would have been done by the federal government.[6]

The next year a bill of a similar character, but including Missouri as well

[1] *Congressional Globe*, 31 Congress, 1 session, 1849.
[2] *Ibid.*, 29 Congress, 1 session, 356.
[3] *Ibid.*, 30 Congress, 1 session, 52.
[4] *Senate Documents*, 3, no. 8, 30 Congress, 1 session, C. S., 505.
[5] *Congressional Globe*, 30 Congress, 1 session, 738, 1043, 1047-1048.
[6] *Ibid.*, 1043.

as Arkansas, came before the Senate. But nothing further was accomplished. In the meantime a bill had been introduced into the House which granted to Louisiana the swamp and overflowed lands within the state that were unfit for cultivation. Hermanson, of Louisiana, pointed out that in order to keep the river from the lowlands the state had constructed fourteen hundred miles of levees at a cost of twenty million dollars, that it had thereby reclaimed three and a half million acres of government land, previously of no value, and that the United States had sold this land and retained the profits. Therefore, the proposed grant was the payment of a debt. Moreover, the health of the state made it necessary to reclaim the remaining lands, and it was fair that Congress should compensate the state for doing the work. Brodhead, of Pennsylvania, said that it would be but an act of justice to cede the lands, that they were now valueless and would forever remain so unless reclaimed by the energy of the state. Vinton, of Ohio, objected that the bill was too indefinite. Who should say, he asked, what lands were unfit for cultivation? He believed that pending the adjustment of the grant the government would be involved in difficulty in disposing of its other land. He also objected to the grant because it would set a precedent.[7]

The measure passed the House by a vote of 100 to 61. The public land states were overwhelmingly for the bill, their vote standing 49 to 4 in favor of it, while the vote of the states having no public land stood 57 to 51 against it. It was the same situation as we have noted before in connection with propositions for extending the land grant policy, a solid West against a divided East. The majority of the Democrats favored the measure, the vote being 66 to 12. The majority of the Whigs opposed it, the vote being 49 to 34. But the Whigs from the public land states, with the exception of three Ohio men, all joined their Democratic colleagues in supporting the bill.[8] The measure passed the Senate without much opposition.[9]

The important provisions of the act are the following: "To aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands therein, the whole of those swamp and overflowed lands" that were "unfit for cultivation" were granted to the state. The proceeds of the lands were to be applied "exclusively, as far as necessary, to the construction of the levees and drains aforesaid." The lands were to be selected by federal deputies acting under the direction of the surveyor general of the district. Upon the approval of their selections by the secretary of the treasury, title was to vest in the state. In making out this list "all legal subdivisions" the greater part of which should be found to be swamp lands, subject to overflow and unfit for cultivation, should be

[7] *Ibid.*, 18: 30 Congress, 2 session, 592.
[8] *Ibid.*, 592.
[9] *Ibid.*, 594.

included, but when the greater part of a subdivision was not of that character, the whole was to be excluded. The act did not apply to lands fronting on rivers, creeks, bayous, and watercourses which had been surveyed into lots or tracts under the acts of March 3, 1811, and May 24, 1824. The expense of selecting the lands was to be borne by the state.[10]

Measures applying to other states were introduced into the Senate in 1848 and 1849 but did not reach a vote. These have been referred to above. At the next session Borland, of Arkansas, for a third time introduced a bill granting the swamp land in Arkansas to the state. This was referred to the committee on public lands, of which Borland was a member. In the hands of this committee the measure was extended so as to include all the public land states.

Borland argued that if the principle was right for Louisiana it was right for Arkansas, an argument which Vinton, of Ohio, had predicted the year before. In answer to the objection that the grant was indefinite, he stated that the records of the general land office would show exactly what lands were included. King, of Massachusetts, claimed that the lands not only were of no value to the United States but rendered the lands contiguous unhealthy and consequently unsalable. Therefore, he argued, inasmuch as the United States would not drain the lands, it might gain by giving them to the states, which would. Underwood, of Kentucky, formerly an advocate of reclamation by the United States, had found so little support for his plan that he became a supporter of the grant. It was better, he thought, to give the lands to the state than to allow them to remain swamp lands forever.[11]

As the measure passed the Senate it included only the swamp lands and the grant was further limited by the clause "known and designated on the plats of the General Land Office as swamp lands."[12] In this form the grant was definite. But Johnson, of Arkansas, communicated with Commissioner Butterfield in regard to the matter and was informed that the plats of the general land office indicated only a small part of the lands subject to annual overflow because such lands had been surveyed in the dryest seasons. "The bill as it stands," Johnson said in the House, "is not worth a penny. It is altogether a mistake." In support of his assertion he read the commissioner's letter.[13] As a result of this information the House amended the bill so as to read, "swamp and overflowed lands made unfit thereby for cultivation." It was then objected that this would make the grant indefinite, but Bowlin, of Missouri, insisted that the land office had in its possession information from sources other than the plats which would enable it to designate

[10] *Statutes at Large*, 9: 352-353.
[11] *Congressional Globe*, 31 Congress, 1 session, 1191-1192.
[12] *Ibid.*, 1848.
[13] *Ibid.*, 1431.

every acre of land.[14] With this assurance the House passed the bill by a vote of 120 to 53.[15] The measure in its amended form was accepted by the Senate,[16] although a few senators with more foresight than their fellows pointed out that the indefinite character of the grant was very objectionable.[17]

The act of 1850 differed from the act of the previous year in one important particular. No provision was made for the examination of the land. The secretary of the interior was required to make out lists and plats of the lands, transmit them to the governors of the respective states, and at their request cause patents to be issued.

In 1860 the act of 1850 was extended to Oregon and Minnesota.[18] The fourteen public land states admitted after that time have not received the swamp land grant. In 1878 the senate committee on public lands recommended the passage of a bill extending the grant to the four public land states admitted to the Union since 1860, but the measure failed to pass.[19] The act of 1849 applied to one state, the act of the next year to twelve, and the act of 1860 to two. There are thus fifteen states that have received the swamp land grant.

No land grant has proved as difficult to adjust as the swamp land grant. It was held to be a grant *in praesenti,* that is, of such a character as to transfer title immediately.[20] This led to a conflict between the states and settlers who had occupied swamp land subsequent to the time of the grant, supposing it to be a part of the public domain.[21] In order to adjust these claims, Congress in 1855 passed an act directing patents to be issued to all persons who had made entries of lands claimed as swamp lands, either with cash, land warrants, or scrip, prior to the issue of patents to the states, unless such land had been disposed of by the state before the claim of the individual attached. In case lands were sold by the federal government, upon proof by the state that they were in fact swamp lands, the purchase price was to be turned over to the state, and, if entered with land warrants or scrip, the state was authorized to locate a like amount upon any of the public lands subject to entry at one dollar and a quarter an acre.[22] This act was not prospective in its operation. It was, however, extended to 1857 by an act of that year.[23]

As these acts were to the advantage of their citizens the states acquiesced. Had they chosen to question the validity of the acts, the states must have

[14] *Ibid.*, 1826-1827.
[15] *Ibid.*, 1832.
[16] *Ibid.*, 1999.
[17] *Ibid.*, 1848-1849.
[18] *Statutes at Large*, 12: 3.
[19] *Senate Reports*, 2, no. 502, 45 Congress, 2 session, C. S., 1790.
[20] Railroad Co. *v.* Smith, 9 *Wallace*, 95; *Senate Reports*, 2: no. 502, 45 Congress, 2 session, C. S., 1790.
[21] *Senate Documents*, 14, no. 86, 34 Congress, 1 and 2 sessions, C. S., 823.
[22] *Statutes at Large*, 10: 634-635.
[23] *Ibid.*, 11: 251.

prevailed. Title, having once passed to the state, can no more be divested at the will of Congress than can the title of an individual.[24]

The acts of 1849 and 1850 fixed no time within which the grants must be selected. In 1860, in order to hasten the adjustment of the grants, it was provided that all lands within the surveyed portions of the public domain must be selected within two years after the close of the next session of the legislatures in the respective states. If within the unsurveyed portions, an equal length of time after the completion of the survey was the period allotted.[25]

When the act of 1850 was before Congress the advocates of the measure made the statement that the land office had in its possession information that would make possible the immediate designation of the land. But this was found to be incorrect. Large areas of land that came within the description of the act had been surveyed in very dry seasons and were not indicated to be swamp or overflowed lands. The general land office, therefore, held that it would be unjust to compel the states to accept the field notes as the basis of selection. Accordingly, as there was no appropriation for the examination of the land by federal agents, the states were given the option, either to accept the lands shown by the field notes to be swamp and overflowed, or to select the lands through their own agents. In the latter case the states were required to furnish statements under oath as to what lands were of the character described in the act. Of the states included in the grant of 1850, only Wisconsin and Michigan elected to abide by the field notes of the survey. Minnesota later followed the same course.

Three of the states which chose to make their own selections, Missouri, Iowa, and Illinois, transferred their lands to their counties. The work of selection thus fell to county officials. It soon became apparent that the counties were using their power to secure lands that were not included in the grant. It therefore became necessary in many cases to have federal agents examine the land. Of 57,200 acres selected as swamp lands by three counties in Illinois only 7,200 were found to be of that character upon reëxamination. Of 71,760 acres certified to be swamp lands by five counties in Iowa, only 7,400 were found to come within the description. A very large amount of the land selected by the state of Florida was not swamp or overflowed land.[26]

This would perhaps in time have resulted in a fair adjustment. But in 1857 Congress ordered all selections reported to the land office to be confirmed, providing they did not interfere with actual settlers.[27] There is good evidence to show that this act confirmed to the states large areas which were not swamp or overflowed lands.[28]

[24] Busch *v.* Donohue, 31 *Michigan*, 481.
[25] *Statutes at Large*, 13: 3.
[26] *Senate Executive Documents*, 11, no. 249, 50 Congress, 1 session, C. S., 2514.
[27] *Statutes at Large*, 11: 251.
[28] *Senate Executive Documents*, 11, no. 249, 50 Congress, 1 session, C. S., 2514.

Selections made by the state of Oregon also proved to be very unreliable. In the early eighties it was agreed by the state authorities and the department of the interior that the lands claimed should be examined in the field by an agent of the general land office and an agent of the state. The first agent sent out made false reports in the interest of the swamp land claimants, which resulted in the issuing of patents to the state for some dry land and the approval of a list of about 90,000 acres, more than one third of which, upon reëxamination, was found to be dry land, much of it sage-brush and desert.[29]

In Minnesota, which chose to abide by the field notes of the survey, there was also a great deal of fraud. In 1887 the chief of the swamp land division examined certain lands in the Duluth land district to ascertain whether the returns of the surveyors were correct. It was found that most of the surveys made in that district since 1880 were fraudulent and unreliable and that as a result many tracts of valuable lands, by no means swampy or subject to overflow, had been patented to the state. Here, also, a joint examination of the lands became necessary.[30]

While some of the states have received more land than was called for by the original grant, others have failed to receive lands to which they were fairly entitled. In some cases the federal government failed to live up to its obligations under the acts of 1855 and 1857. These acts provided that the proceeds from the swamp lands sold between the time of the grants and 1857 should be turned over to the states. This obligation was met. By June 30, 1907, $2,057,248 had been distributed.[31] But it was also provided that in lieu of swamp lands located with scrip or land warrants, indemnity lands might be selected. The general land office held that such lands could not be located outside of the state. The result has been that Iowa, Illinois, and Indiana hold unsatisfied certificates aggregating 121,059 acres, because there is no public land left in these states on which to locate them.[32]

After 1857 there was no provision for indemnity in case swamp lands were disposed of by the United States. But, as the grant was a grant *in praesenti*, the purchasers from the federal government, and not the states, were the immediate sufferers. From December 9, 1885, to February 8, 1888, eighteen bills were introduced into Congress providing for some form of relief.[33] The legislatures of Iowa and Illinois petitioned Congress to adjust their claims and the claims of their citizens.[34] In 1886 the house committee on public lands reported a bill providing for the payment to the states of the money received from the sale of swamp lands since 1857 and compensation in cash for swamp lands otherwise disposed of, this being upon condition

[29] *Ibid.*
[30] *Ibid.*
[31] "Annual Report Commissioner General Land Office," *Reports of Department of Interior, 1907, Administrative Reports*, 1, 170, C. S., 5295.
[32] *House Reports*, 2, no. 422, 4, 51 Congress, 1 session, C. S., 2808.
[33] *Index Congressional Record*, 17: 578; 18: 181; 19: 725; *Congressional Record*, Vols. 17-19.
[34] *Congressional Record*, 18: 2371; 19: 3610.

that the states should relinquish their title to such lands.[35] Similar bills were favorably reported by the same committee in 1888, 1890, 1892, 1894, 1896, 1900, and 1907.[36] But Congress was and continued to be hostile. There seems to have been a general feeling that the swamp land grant was quite large enough as it was without adding indemnity grants.

The swamp land grant of 1850 is the largest single grant in the nation's history. Up to June 30, 1907, there had been patented under this grant and the grants of 1849 and 1860, 63,356,541 acres. To this may be added 2,919,518 acres for which indemnity had been given in land or cash, which brings the total to 66,276,059. Less than one million acres have been patented since that time. From June 30, 1892, to June 30, 1906, claims aggregating 10,219,295 acres were rejected. Prior to 1892 no record was kept of the amount of rejections and cancellations.[37] June 30, 1911, there were pending before the general land office swamp land claims amounting to 420,098 acres and indemnity claims for 1,500,245 acres.[38]

The amount patented to the various states by June 30, 1907, varied from 26,252 acres to Ohio to 20,139,585 acres to Florida, more than four sevenths of the total area of the state.[39]

The total amount of swamp land patented to each state by June 30, 1907, is as follows:[40]

State	Acres
Alabama	418,520.14
Arkansas	7,685,255.21
California	2,042,214.99
Florida	20,139,584.76
Illinois	1,457,380.98
Indiana	1,254,230.73
Iowa	871,702.71
Louisiana (act of 1849)	8,922,389.43
Louisiana (act of 1850)	394,237.45
Michigan	5,655,533.16
Minnesota	4,356,485.39
Mississippi	3,282,643.80
Missouri	3,345,514.51
Ohio	26,251.95
Oregon	253,493.46
Wisconsin	3,251,102.34
Total	63,356,541.01

The swamp land grants provided that the proceeds should be used "exclusively, as far as necessary" for the reclamation of the lands. In Mills

[35] *House Reports*, 4, no. 1089, 49 Congress, 1 session, C. S., 2438.
[36] *Ibid.*, 5: no. 1674, 50 Congress, 1 session, C. S., 2602; *Ibid.*, 2: no. 422, 51 Congress, 1 session, C. S., 2808; *Ibid.*, 1: no. 296, 52 Congress, 1 session, C. S., 3042; *Ibid.*, 1: no. 249, 53 Congress, 2 session, C. S., 3269; *Ibid.*, 4: no. 853, 54 Congress, 1 session, C. S., 3460; *Ibid.*, 3: no. 548, 56 Congress, 1 session, C. S., 4023; *Ibid.*, 2: no. 7617, 59 Congress, 2 session, C. S., 5065.
[37] Annual Report Commissioner General Land Office, *Reports Department of Interior, Administrative Reports*, 1, 169-170, C. S., 5295.
[38] *Ibid.*, 1911, 142, C. S., 6222.
[39] *Ibid.*, 1907, 169, C. S., 5295.
[40] *Ibid.*

County v. Railroad Companies,[41] the question arose whether the lands could be lawfully disposed of for other purposes prior to their reclamation. The state of Iowa granted the swamp lands in Mills County to the county to be used in whole or in part for erecting public buildings, education, roads, and bridges. Mills County in turn granted the lands to certain railroad companies. Was the second grant valid? The Supreme Court first decided that it was not, but after a rehearing the court took the opposite view. It said in part: "Upon further consideration of the whole subject we are convinced that the application of the proceeds of these lands to the purposes of the grant rests upon the good faith of the state and that the state may exercise its discretion as to the disposal of them. It is a matter between two sovereign powers and one which private parties cannot bring into discussion." Title to millions of acres of swamp lands in this and other states depended upon the court's decision. In Stearns v. Minnesota[42] the Supreme Court remarked: "It has long been settled that Congress alone can inquire into the manner in which the state executed that trust and disposed of the lands." But while the Supreme Court has intimated that the federal government has the power to call the states to account when they violate their trust the extent of that power has never been determined, for Congress has taken no action.

[41] 107 *United States*, 557.
[42] 179 *United States*, 231.

CHAPTER X

FEDERAL LAND GRANTS FOR AGRICULTURAL COLLEGES

The first movement in Congress looking toward a federal land grant for agricultural colleges occurred on December 14, 1857, when Morrill, of Vermont, introduced into the House a bill donating land to states and territories which should provide colleges for the benefit of agriculture and the mechanic arts. In case there were no public lands in the state, certificates known as "scrip" were to be given, which authorized the location of land in any state or territory. The states, however, were not to locate these lands, but must sell their scrip to private individuals. In case a state failed to establish a college it was required to turn over to the federal government the amount received from the sales. The amount was based on representation in Congress, twenty thousand acres being allotted for each senator, representative, and territorial delegate, a total of 6,340,000 acres.[1] The bill was referred to the committee on public lands, from which it was reported back with a recommendation that it do not pass.[2] The report attacked the measure as both inexpedient and unconstitutional, and fraught with great danger to the Union. "Such is the symmetry of our government," said the committee, "its very existence depends upon its severe adherence to the limitation of its duties. Within that it has no power but to bless; beyond it, it has no power but to ruin. This limitation is the anchor of our safety; when it fails, it will involve the ruin of the republic."[3] Morrill spoke at great length in favor of the bill. In his opinion the measure would prove a national panacea. "Pass this measure," he said, "and we shall have done—

"Something to enable the farmer to raise two blades of grass instead of one;

"Something for every owner of land;

"Something for all who desire to own land;

"Something for cheap scientific education;

"Something for every man who loves intelligence and not ignorance;

"Something to induce the farmers' sons and daughters to settle and cluster around the old homesteads;

"Something to remove the last vestige of pauperism from our land;

"Something for peace, good order, and the better support of Christian churches and common schools;

[1] *Congressional Globe*, 35 Congress, 1 session, 32.
[2] *Ibid.*, 52, 1609.
[3] *Reports of Committee*, 2, no. 261, 35 Congress, 1 session, C. S., 965.

"Something to enable sterile railroads to pay dividends;

"Something to enable the people to bear the enormous expenditures of the national Government;

"Something to check the passion of individuals, and of the nation, for indefinite territorial expansion and ultimate decrepitude;

"Something to prevent the dispersion of our population, and to concentrate it around the best lands of our country—places hallowed by church spires, and mellowed by all the influences of time—where the consumer will be placed at the door of the producer; and thereby

"Something to obtain higher prices for all sorts of agricultural productions; and

"Something to increase the loveliness of the American landscape."[4]

The bill passed the House by a vote 105 to 100.[5] In the Senate it went over to the next session. Pugh, of Ohio, branded it as "an atrocious violation of the organic law" tying the hands of state legislatures. He thought the scrip would all be thrown on the market at once and consequently bring only a nominal price.[6] Rice, of Minnesota, objected that the measure would give to some states a monopoly of the land in their sister states.[7] Mason, of Virginia, said the measure would act as a bribe to compel the states to conform their will to the federal government.[8] Jefferson Davis, of Mississippi, pointed out that the condition of the grant could not be enforced. "The Government," he said, "cannot coerce a State."[9]

The bill passed the Senate by a vote of 25 to 22. As it was general in its application, there was no dividing line between public land states and others. It was rather the North against the South, loose construction views of the Constitution against strict construction. Only one of the senators from states which left the Union two years later voted for the measure, while fifteen voted against it. With the opponents of the bill were also found a few northern men, such as Rice and Shields of Minnesota, who feared that the development of their states would be retarded by the taking up of the lands by non-resident speculators.

But the measure was not yet to become a law. The strict constructionists had one more vote to cast and that vote was an emphatic negative. In his veto message Buchanan argued that the power to aid agricultural colleges was given neither expressly nor by implication. Congress was but a trustee of the federal lands. "It would be a strange anomaly, indeed," he said, "to have created two funds, the one by taxation confined to the execution of the enumerated powers delegated to Congress, and the other from the public lands, applicable to all subjects, foreign and domestic, which

[4] *Congressional Globe*, 35 Congress, 1 session, 1696-1697.
[5] *Ibid.*, 1742.
[6] *Ibid.*, 35 Congress, 2 session, 715-716.
[7] *Ibid.*, 717.
[8] *Ibid.*, 719.
[9] *Ibid.*, 722.

Congress might designate."[10] The vote in the House on the vetoed bill stood 105 to 96.[11] There the matter rested until the end of this administration.

In 1861 Morrill again introduced his bill and it was again reported back from the committee on public lands with a recommendation that it do not pass.[12] In the meantime Wade, of Ohio, had introduced a like measure into the Senate.[13] That body was now almost unanimous for the bill. The withdrawal of the twenty-two senators from the seceded states had broken the strength of the opposition. Some of the senators still feared absentee proprietorship,[14] but this fear was in a measure relieved by the adoption of an amendment, on motion of Wilkinson, of Minnesota, limiting the locations in any one state to one million acres.[15] The final vote was 32 to 7. The House cut off discussion by the use of the previous question and passed the bill with a vote of 90 to 25.[16]

The measure granted 30,000 acres to each state for each senator and representative according to the apportionment of 1860. The land was to be selected in legal subdivisions of not less than one quarter-section from land subject to sale at private entry at one dollar and a quarter an acre. Double minimum land, such as the alternate sections in railroad grants, might be selected, but in that event each acre was to count for two. Mineral lands were excluded. Each state was required to select the land within its own limits, but in case of a deficiency, the secretary of the interior was to issue land scrip for the balance, such scrip to be sold by the state and the proceeds applied to the purposes of the act. Not more than one million acres of scrip were to be located in any state. This maximum was exceeded in Wisconsin but the locations in excess of the million-acre limit were legalized by a special act.[17] In 1868 the local communities were protected by a provision to the effect that in no case should more than three sections be located in any one township.[18]

The interest of the fund was to be devoted to the "endowment, support and maintenance of at least one college where the leading object, without excluding other scientific and classical studies and including military tactics," was to be to teach branches of learning related to agriculture and mechanic arts.

Careful provision was made for the safety and permanence of the fund. Ninety per cent of the money derived from the sale of land or scrip was to be invested in stocks of the United States or of the states or in other safe

[10] *Ibid.*, 1413.
[11] *Ibid.*, 1414.
[12] *Ibid.*, 37 Congress, 2 session, 33, 99, 2432.
[13] *Ibid.*, 1935, 2187.
[14] *Ibid.*, 2248.
[15] *Ibid.*, 2625-2626.
[16] *Ibid.*, 2770.
[17] *Statutes at Large*, 16: 116.
[18] *Ibid.*, 15: 227.

stocks, bearing not less than five per cent. The balance might be used for the purchase of experimental farms and sites for buildings. All losses from the permanent fund were to be made good by the state.

Later the field of investment was extended. In 1882 Iowa was authorized to loan the fund upon real estate security.[19] The next year states having no stocks were authorized to invest the fund in any manner the legislature might prescribe providing the income was not less than five per cent.

Provision was made for national supervision over the application of the proceeds. The state governors were required to make annual reports to Congress stating the amount of land sold and the amount of the proceeds from the sales. Each state was bound by the act to make an annual report regarding the progress of the college, the cost and results of experiments made, and such state industrial and economic statistics as might be considered useful to the secretary of the interior and the other colleges.

The states had to express their acceptance of the terms of the act within two years and provide at least one college within five.[20] These periods were later extended.[21] No state "while in a condition of rebellion against the United States" was to be entitled to the benefits of the act.[22]

The last-named provision led to a conflict between Congress and President Johnson. In 1866 he directed scrip to be issued to North Carolina. The next year steps were taken to issue scrip to Georgia, Virginia, and Mississippi. Congress thereupon in a joint resolution pointed out that no state was entitled to receive its quota before it had been restored to its proper constitutional relation to the Union, asserted its right to pass upon this matter, and forbade the issue of scrip to the disloyal states until restored to their rights.[23]

The act of 1862 applied only to the states that were then in the Union. In 1864 it was extended to West Virginia,[24] in 1866 to Nevada,[25] and in 1867 to Nebraska.[26] In 1866 the interests of the future states were taken care of by an act providing that whenever a territory became a state it should become entitled to the benefits of the act by expressing its acceptance thereof within three years and providing a college within five years thereafter.[27]

Two other acts for the advancement of agriculture, although not land grants, may properly be referred to. In 1887 Congress appropriated $15,000 per annum to each state and territory that should provide an agricultural experiment station.[28] Three years later there followed an appropriation of

[19] *Ibid.*, 22: 50.
[20] *Ibid.*, 12: 504-505.
[21] *Ibid.*, 13: 47; 14: 209; 17: 40, 397, 417.
[22] *Ibid.*, 12: 503.
[23] *Ibid.*, 15: 25-26.
[24] *Ibid.*, 13: 47.
[25] *Ibid.*, 14: 85.
[26] *Ibid.*, 15: 13.
[27] *Ibid.*, 14: 208-209.
[28] *Ibid.*, 24: 440-441.

$15,000 annually to each state and territory to be applied to instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematical, physical, natural, and economic science, with special reference to their application to the industries of life. This amount was to be increased by one thousand dollars each year until it should reach twenty-five thousand.[29] In both of these acts the appropriation was made from the money derived from the sale of public land. An act of 1903 provides that the deficiency shall be made good in case the annual sales are not sufficient to meet the payments under the act of 1890.[30]

As passed in 1859 the Morrill Bill carried a grant of twenty thousand acres to each state for each senator and representative in Congress. The act of 1862 increased the grant by one half but followed the same method of distribution That this was not fair to the new states is almost too obvious for comment. The great agricultural states of the northwest were left without adequate grants, while populous New York fell heir to nearly a million acres.

The amount to which the states having land subject to selection "in place" were entitled is as follows:[31]

State	Acres
Arizona	150,000
California	150,000
Colorado	90,000
Idaho	90,000
Iowa	240,000
Kansas	90,000
Michigan	240,000
Minnesota	120,000
Missouri	330,000
Montana	90,000
Nebraska	90,000
Nevada	90,000
New Mexico	150,000
North Dakota	90,000
Oklahoma	250,000
Oregon	90,000
South Dakota	120,000
Utah	200,000
Washington	90,000
Wisconsin	240,000
Wyoming	90,000
Total	3,090,000

[29] *Ibid.*, 26: 417-418.
[30] *Ibid.*, 32: 803.
[31] "Annual Report Commissioner General Land Office," 1864, *House Executive Documents*, 38 Congress, 2 session, 5: 28, C. S., 1220; *House Miscellaneous Documents*, 47 Congress, 2 session, 19: 229, C. S., 2158; *Statutes at Large*.

The following states have received scrip in the amount indicated:[82]

State	Acres
Alabama	240,000
Arkansas	150,000
Connecticut	180,000
Delaware	90,000
Florida	90,000
Georgia	270.000
Illinois	480,000
Indiana	390,000
Kentucky	330,000
Louisiana	210,000
Maine	210,000
Maryland	210,000
Massachusetts	360,000
Mississippi	210,000
New Hampshire	150,000
New Jersey	210,000
New York	990,000
North Carolina	270,000
Ohio	630,000
Pennsylvania	700,000
Rhode Island	120,000
South Carolina	180,000
Tennessee	300,000
Texas	180,000
Vermont	150,000
Virginia	300,000
West Virginia	150,000
Total	7,750,000
Grand total	10,840,000

[82] *Ibid.*

CHAPTER XI

THE AUTHORITY OF THE FEDERAL GOVERNMENT OVER THE PUBLIC DOMAIN

The question as to the extent of the authority of the federal government over the public domain is so closely related to the federal land grants that it seems appropriate to consider it in this monograph.

In the division of powers in the American constitutional system the states have the first word and last in regard to so many matters of police regulation that we sometimes forget, not only that there are certain fields of police activity in which the federal government can, if it will, make its fiat law within every foot of American territory, but also that there are large areas both within and without the boundaries of the states in which the will of the national government is law in regard to all matters, including police regulation.

The federal state has a capital city. Is its power supreme within the limits of that city? Entrusted with the powers of war and peace, it must have arsenals and navy-yards, forts and armories, military reservations, and soldiers' homes. In many cases these must be within the territorial limits of the states. What are its powers over the lands devoted to these uses? Vested with the war power and with the control of foreign relations, it has acquired large areas of land by discovery, by conquest, and by treaty. What authority does it possess over such territory? Given the power to admit new states into the Union it has carved out portions of this territory and admitted these areas as states. Has this deprived it of its police power over the lands which it still owns within these new states? If so, can it retain its authority by specific reservation at the time of the admission of the state? If it can, but fails to make such reservation, can it regain control by cession of jurisdiction by the state? It is also possible that it may need land within a state and that the owner may not be willing to sell. In such an event, can it take the land needed under the power of eminent domain? If it has the power to acquire land in this way and exercises it, does it secure the same authority over the land taken as if it had acquired it with the consent of the state? It has the constitutional power to dispose of its territory. In so doing, may it impose conditions upon the use of the land and thus retain, in a measure, control over it, although it has parted with the title? Finally, to what extent has it exercised the powers which it possesses? These questions will serve to indicate the purpose of this chapter.

The authority of the federal government finds its source in the Consti-

tution. That instrument recognizes two distinct grounds for the exercise of power by the federal government: first, the purpose for which the power is exercised; second, the territory within which it is exercised. It is only the second of these which falls within the purview of this study. In examining the power of the federal government from this point of view it will be convenient to divide the lands owned by the United States into such as lie outside of the limits of any state and such as lie within the boundaries of a state, inasmuch as entirely different constitutional considerations apply.

Federal Lands Situated Outside of the Boundaries of any State

These lands fall into two divisions, the District of Columbia and the lands within the territories.

The years immediately preceding the drafting of the Constitution served to impress with tremendous force upon the men who framed that instrument the importance of giving to the federal state for its seat of government a district in which it could be supreme. The country even witnessed the humiliating spectacle of its Congress surrounded and insulted by a body of mutineers of the Continental Army, and forced to flee to New Jersey for protection. In regard to this proceeding Justice Story remarks: "If such a lesson could have been lost upon the people, it would have been as humiliating to their intelligence, as it would have been offensive to their honor."[1] But it was not without effect. In section eight of article two of the Constitution we read: "The congress shall have power to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square), as may, by cession of particular states and the acceptance of congress, become the seat of government of the United States." Having exclusive legislative power the national government has of course had absolute control over all matters whether relating to lands owned by the United States or to the lands of private individuals. The extent of the power is thus expressed in Capital Traction Company v. Hof:[2] "The congress of the United States, ... has the entire control over the District of Columbia for every purpose of government, national or local. It may exercise within the District all legislative powers that the legislature of a state might exercise within the state."

The Constitution provides that Congress shall exercise "exclusive legislation" over the district. Willoughby, in his work on the Constitution, points out that this might have been taken to mean that Congress should have power exclusive of the power of the states ceding the district. But Congress has acted on the assumption that the clause means that while municipal powers may be delegated to a local governing body for the district it may not delegate to such body the general legislative power possessed by a

[1] Story, *Constitution*, 2: 124.
[2] Capital Traction Company *v.* Hof, 174 *United States*, 5.

state.[3] Various dicta of the Supreme Court also support this view. Thus in Stoutenburgh v. Hennick,[4] the court declares: "As the repository of the legislative power of the United States, Congress, in creating the District of Columbia 'a body corporate for municipal purposes' could only authorize it to exercise municipal powers." The result has been that, while purely municipal matters have been left to a local board, Congress has spent a not inconsiderable portion of its time in enacting and amending codes of law for the district.

When the Constitution was adopted most of the lands of the Northwest Territory had been ceded to the United States. We should therefore expect to find some provision in that instrument for the government of this territory. The following clause, Article IV, Section 3, was undoubtedly meant to cover this matter: "The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." But this clause is a very unhappy one in phraseology. What is meant by the word "territory?" The Northwest Territory, at the time of the framing of the Constitution, while all under the dominion of the United States, was by no means all owned by the federal government. As no other authority is given for the government of this territory it would seem that the framers of the Constitution must have intended the word "territory" to include all of this area whether the United States owned it or not. But then the next phrase "or other property" becomes contradictory, for if the "territory" referred to is not property of the United States it is absurd to speak of "other" property. Furthermore, it is not clear whether the territory referred to is merely such as belonged to the United States when the Constitution was adopted or included territory acquired afterward as well.

It is therefore not surprising to find that this clause has been a puzzling one even to the Supreme Court. In the case of American Insurance Company v. Canter,[5] Marshall declared that the clause gave the United States authority to govern the territory of Florida. But he adds: "Perhaps, the power of governing a territory belonging to the United States, which has not, by becoming a state, acquired the means of self-government, may result necessarily from the fact, that it is not within the jurisdiction of any particular state, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned." In its various decisions relating to this matter the Supreme Court has expressed very divergent views. In the Dred Scott Case[6] Chief Justice Taney expressly de-

[3] Willoughby, *Constitutional Law*, 1: 375-376.
[4] Stoutenburgh *v.* Hennick, 129 *United States*, 147.
[5] 1 *Peters*, 542.
[6] Scott *v.* Sandford, 19 *Howard*, 436.

clared that the word "territory" in the clause quoted above was intended to be confined to the territory which belonged to or was claimed by the United States when the Constitution was adopted. But in the case of the Mormon Church v. United States,[7] decided in 1889, the court, in the following statement, repudiates Taney's and reaffirms Marshall's views: "The power of Congress over the Territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States." But while the reasons assigned for the existence of the power have been various the fact remains that the power has been recognized and exercised during the whole period of American history under the Constitution. Without attempting to follow the details of legislation it is sufficient to say that for most territories there have been two periods, an unorganized period, now represented only by Alaska, and an organized period. In the former period the territory has received all its laws from Congress. In the second it has made its own laws through its legislature, but these have been subject to amendment or annulment by Congress, a power not infrequently exercised.

Federal Lands Situated within the Boundaries of the States

With reference to the extent of federal authority the territory within state limits owned by the United States falls into three groups: first, lands acquired with the consent of the state in which they are situated; second, lands acquired without such consent; and, third, lands owned by the United States at the time of the admission of the state.

The eighth section of the second article of the Constitution provides: "The Congress shall exercise like authority [that is, exclusive legislation] over all places purchased by the consent of the legislature of the state in which the same shall be for the erection of forts, magazines, arsenals, dockyards, and other needful public buildings." The extent of the authority granted is the same as that over the District of Columbia, that is, plenary, except with reference to a few matters concerning which the Constitution forbids Congress to legislate, and except in so far as the state in giving authority to acquire the land, reserves the right to exercise certain jurisdiction. In United States v. Cornell, a United States Circuit Court case, decided in 1819, the facts were as follows: The United States, with the consent of the government of Rhode Island, but without a formal act ceding jurisdiction, acquired certain land in that state for a fort. Rhode Island, however, reserved the right to execute civil and criminal process within the land ceded and the fortifications that might be erected thereon. Cornell, a

[7] Mormon Church *v.* United States, 136 *United States*, 42.

United States soldier, committed murder within the limits of the land thus acquired. The main questions at issue were whether the exclusive jurisdiction of the United States extended over the territory without a formal act of cession, and whether the reservation to serve process made the jurisdiction of the United States concurrent with that of the state. On the first question Justice Story, who wrote the opinion in the case, remarked: "The Constitution of the United States declares that Congress shall have power to exercise 'exclusive legislation' in all 'cases whatsoever' over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. When therefore a purchase of land for any of these purposes is made by the national government, and the State Legislature has given its consent to the purchase, the land so purchased by the very terms of the constitution ipso facto falls within the exclusive legislation of Congress, and the State jurisdiction is completely ousted."[8] Exclusive jurisdiction, he said, must result from "exclusive legislation." The reservation of the right to serve process merely prevented the lands from becoming a sanctuary for fugitives from justice, but gave to the state no jurisdiction over acts committeed within the fort grounds.[9] It follows from this decision that the power of the United States is supreme within territory acquired with the consent of a state.

In the case of Commonwealth v. Clary[10] it was held by the supreme court of Massachussetts that the courts of the state could not take cognizance of the alleged offense of selling liquor contrary to state law within lands purchased with the consent of the state for arsenal grounds. The reservation of the right to serve civil and criminal process was held to give no jurisdiction over acts committed within the ceded territory. In Mitchell v. Tibbits[11] it was held that a vessel carrying stone from Maine to the navy-yard at Charlestown, Massachussetts, was not employed in transporting stone within the state, and therefore committed no offense in disregarding the state's police regulation concerning vessels thus employed. In the leading United States case on this subject, Fort Leavenworth R. R. Co. v. Lowe,[12] the court refers with approval to these state court opinions. An interesting corollary of the exclusive character of the federal jurisdiction is the loss of civil and political privileges by the persons residing within the ceded territory. The supreme court of Massachusetts in 1841 declared that no persons residing in such territory were entitled to the benefit of common schools for their children.[13] And the supreme court of Ohio.

[8] United States *v.* Cornell, 2 *Mason*, 63.
[9] *Ibid.*, 65.
[10] Commonwealth *v.* Clary, 8 *Massachusetts*, 76-77.
[11] Mitchell *v.* Tibbits, 17 *Pickering*, 298, 302.
[12] Fort Leavenworth Railroad Company *v.* Lowe, 114 *United States*, 525.
[13] 1 *Metcalf*, 580, 583.

in Sinks v. Reese,[14] came to the conclusion that inmates of the National Asylum for Disabled Volunteer Soldiers were not residents of the state within the meaning of that clause of the state constitution which required that voters should be residents of the state.

While the Constitution makes provision for the acquisition of territory by the federal government only with the consent of the state in which the land is located, in practice such consent has not always been secured. The question then arises as to the extent of the federal police power in such a case. In regard to this question the Supreme Court in Fort Leavenworth R. R. Co. v. Lowe[15] has this to say: "The consent of the States to the purchase of lands within them for the special purposes named is, however, essential, under the Constitution, to the transfer to the General Government, with the title, of political jurisdiction and dominion. Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the States equally with the property of private individuals." But while conceding that if the land is acquired without the consent of the state the general jurisdiction remains with the state, the court expresses the opinion that if upon the lands thus acquired "forts, arsenals, or other public buildings are erected for the uses of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed."[16] Strictly speaking, this part of the opinion is dictum, but there appears to be no question that it expresses a correct interpretation of the Constitution.

It was decided in Kohl v. United States[17] that the United States may acquire land within a state by the exercise of the power of eminent domain, if the land is needed to carry out the powers granted by the Constitution. Over land acquired in this way the United States possesses the same authority as over land acquired by purchase but without the consent of the state.

At the time of the admission of a new state into the Union the United States may reserve political jurisdiction over a part of the public lands or it may make no such reservation or, after its admission, the new state may cede back to the federal government jurisdiction over land to which the United States already has title. In each case the extent of the authority

[14] Sinks *v.* Reese, 19 *Ohio State*, 306, 318-319.
[15] Fort Leavenworth Railroad Company *v.* Lowe, 114 *United States*, 531.
[16] 114 *United States*, 539.
[17] Kohl *v.* United States, 91 *United States*, 372.

of the federal government may be different. These, therefore, call for separate consideration.

There being no reservation of political authority.—Camfield v. United States[18] is here the most helpful case. In 1885 Congress passed an act forbidding all enclosures of public land. In 1890 Colorado was admitted into the Union. After the territory had become a state Camfield erected a fence around two townships of land in which he owned all the odd-numbered sections and the United States owned all the even-numbered sections. This fence, however, was erected in such a way as not to trespass on any lands of the United States. "The fence," the court remarks, "is clearly a nuisance." The question was whether the general government could abate such a nuisance within the limits of a state. The court declared that the general government has a power over its property analogous to the police power of the state and that the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case, and continued: "While we do not undertake to say that Congress has the unlimited power to legislate against nuisances within a State, which it would have within a Territory, we do not think the admission of a Territory as a State deprives it of the power of legislating for the protection of the public lands, though it may thereby involve the exercise of what is ordinarily known as the police power, so long as such power is directed solely to its own protection. A different rule would place the public domain of the United States completely at the mercy of state legislation." In a word, this case decides that over the public domain within the limits of a state concerning which there has been no reservation of authority by the federal government at the time of the admission of the state and no grant of authority by the state government the United States possesses such police powers as it needs for the protection of its own interests, and no others. But if the land is used in execution of any of the powers of the federal government the Supreme Court has held that it is beyond such control by the state as will defeat its use for those purposes.

There being a reservation of authority by the United States.—There seems to be no question that when Congress admits a new state into the Union it may reserve complete political authority over any land it may need for governmental purposes. In the case of Fort Leavenworth R. R. Co. v. Lowe, which we have already referred to, the court, speaking of a military reservation in Kansas, says: "Congress might undoubtedly, upon such admission, have stipulated for retention of the political authority, dominion and legislative power of the United States over the Reservation, so long as it should be used for military purposes by the government; that is, it could

[18] Camfield *v.* United States, 167 *United States*, 518, 525-526.

have excepted the place from the jurisdiction of Kansas, as one needed for the uses of the general government."[19]

Whether the same would be true of lands not needed for a governmental purpose appears to be an open question.

Political authority having been ceded back to the United States by the state.—When the state of Kansas was admitted into the Union the United States was the owner of a tract of land within its boundaries called the Fort Leavenworth Military Reservation. Through inadvertence or, perhaps, confidence that a recession of jurisdiction could be had when desired, no political authority was reserved. Sixteen years later the state ceded to the United States exclusive jurisdiction over this area, reserving, however, the right to serve process and to tax corporations within the reservation. In the case of Fort Leavenworth R. R. Co. v. Lowe the question arose whether a state may cede away jurisdiction over any part of its territory except in the particular manner specified in the Constitution, namely, by allowing the federal government to purchase land. It was decided that while it could not cede its jurisdiction to any foreign power it could transfer its authority over lands needed by the United States to the federal government.[20] In making such a cession of authority it need not, however, transfer all authority, but can make such reservations as it may see fit.

It should be noted that in case of such a cession the police laws of the state, although no longer capable of being executed by the state, continue in force unless in conflict with the federal constitution or laws. In Chicago, Rock Island and Pacific Railway Company v. McGlinn,[21] which again involved the military reservation referred to above, it was held that a law of the state of Kansas passed prior to the cession of jurisdiction continued in force within the reservation after the cession of jurisdiction to the United States. This statute provided that every railroad company which did not enclose its road with a fence should be liable for all cattle killed by its cars and, in case the company failed to pay the damages within thirty days after demand by the owner, for reasonable attorneys' fees as well. In reaching this conclusion the court applies the rule of international law "that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, that is, laws which are intended for the protection of private rights, continue in force until abrogated or changed by the new government or sovereign."[22]

Such a cession of jurisdiction over a military reservation transfers exclusive jurisdiction over the entire tract and not merely over such portions of it as are used for military purposes. In the case of Benson v. United

[19] Fort Leavenworth Railroad Company *v.* Lowe, 114 *United States*, 526-527.
[20] *Ibid.*, 541-542.
[21] Chicago Pacific Railway Company *v.* McGlinn, 114 *United States*, 542.
[22] *Ibid.*, 546.

States the Supreme Court held that a murder committed within the Fort Leavenworth Military Reservation but outside of that portion actually occupied by the government was within the exclusive jurisdiction of the United States. This was held to be a case in which the courts must follow the action of the political department of the government.[23]

The Authority of the United States over Lands Disposed of Subject to Conditions

The study of the conditions of the federal land grants has emphasized the fact that no compact between a state and the nation which deprives the former of its equal position has any validity. But there is a class of compacts which the Supreme Court has recognized as valid. These are the compacts that concern the proprietary interest of the contracting state and the United States. This distinction is very clearly pointed out in the case of Stearns v. Minnesota, in which the Supreme Court remarks: "In an inquiry as to the validity of such a compact this distinction must at the outset be noticed. There may be agreements or compacts attempted to be entered into between two States, or between a State and the nation, in reference to political rights and obligations, and there may be those solely in reference to property belonging to the one or the other. That different considerations may underlie the question as to the validity of these two kinds of compacts or agreements is obvious. It has often been said that a State admitted into the Union enters therein in full equality with all the others, and such equality may forbid any agreement or compact limiting or qualifying political rights and obligations; whereas, on the other hand, a mere agreement in reference to property involves no question of equality of status, but only of the power of a State to deal with the nation or with any other State in reference to such property."[24]

Before entering upon the discussion of this topic it is proper to point out the various meanings which the term "condition" has come to bear. In the popular sense it signifies anything required of the grantee in connection with a grant of land, whether or not that requirement affects the character of the title conveyed. In the technical legal sense no requirement coupled with a grant is termed a condition unless it affects the title. The common law recognizes two conditions: a condition precedent, which is of such a character that no title vests in the grantee until the happening of a certain future event; and a condition subsequent, under which title vests at once in the grantee, subject, however, to being defeated by failure to comply with the condition.

Using the term "condition" in the popular sense we may logically divide

[23] Benson v. United States, 146 *United States*, 331.
[24] Stearns v. Minnesota, 179 *United States*, 244-245.

the conditions of the federal land grants into four groups: conditions not relating in any way to the use of the land; conditions relating to the use of the land but allowing absolute title to pass to the grantee; conditions precedent; and conditions subsequent. As the first of these concerns the subject matter of this chapter in only a very remote way it has received separate treatment. The other three will here be considered.

The federal land grants for schools, universities, and agricultural colleges are of this character.[25] The second class of public building lands, the swamp land grants, and the grant of 500,000 acres to each state for internal improvements fall in the same division. Absolute title passed to the states. It follows that the states could sell the lands and give absolute title. This being so there could be no forfeiture of the lands even if the state failed to use the proceeds for the purpose designated. What, then, can the federal government do in the event that a state fails to devote the proceeds to the purpose indicated? This, it may be said, has happened repeatedly; but the federal government has done nothing to enforce its requirements, so the matter has never been decided. It is probable that the Supreme Court would hold that in a public, as in a private, grant such requirements are mere nullities.

Over lands granted subject to a condition precedent the United States retains title and control until the condition comes to pass. The best example of grants of this character is found in the enabling acts of 1889, 1894, and 1906, which granted school sections in temporary reservations, subject to the condition that the grant should not be operative until the reservation should be extinguished.[26]

Most of the railroad lands have been given upon conditions subsequent.[27] The nature of these conditions has been sufficiently explained. In enforcing its regulations Congress has relied upon forfeiture of the land. Mere violation of a prescribed condition, however, does not result in forfeiture. There must be either an act of Congress declaring the forfeiture or a judicial decree to that effect, rendered in pursuance of an act of Congress.[28] When the grant is a private grant the courts, in order to prevent a forfeiture, construe it most strictly against the grantor. This is not true of public grants of the character of those we are considering. The courts argue that the rule should not be applied when the purpose of the forfeiture is to secure the construction of a work in which the public is an interested party.[29]

The power to dispose of the lands of the United States has also given

[25] Schneider *v.* Hutchinson, 35 *Oregon*, 253, 258; Hibberd *v.* Slack, 84 *Federal*, 571, 574.
[26] *Statutes at Large*, 15: 679; 28: 109; 34: 272.
[27] United States *v.* Tennessee and Coosa Railroad, 176 *United States*, 242, 250; Farnsworth et al., Trustees *v.* Minnesota and Pacific Railroad Company et al., 92 *United States*, 49.
[28] St. Louis, Iron Mountain, and Southern Railway Company *v.* McGee, 115 *United States*, 469, 473-474.
[29] Farnsworth et al. *v.* Minnesota and Pacific Railroad Co., 92 *United States*, 49, 68-69.

to Congress the power to control the extent of cultivation and the character of the improvements to be made on a vast area of "homestead" lands.

Summary Concerning the Source and Extent of the Federal Authority over the Public Domain

Before leaving the consideration of the constitutional phases of the question of the source and extent of the federal authority over the public domain it may be worth while to attempt to gather up the conclusions which have been reached.

1. The United States has absolute control over all matters within the District of Columbia.

2. Within the territories the United States has complete control over all matters, but in practice, with reference to most matters of police jurisdiction, it legislates directly only for the unorganized territories and controls the legislation for the organized territories through its veto power over the legislative acts of the territorial legislatures.

3. Over lands within a state acquired with the consent of the state the federal government has absolute control.

4. Over lands within a state acquired without the consent of the state whether by purchase or by the exercise of the right of eminent domain the United States government has only such power as is necessary in order to protect the land from injury and as is necessary for the effective use of the land for purposes authorized by the Constitution.

5. Over federal land within a state concerning which there has been no reservation of authority by the federal government at the time of the admission of the state and no cession of jurisdiction by the state government, the United States possesses such police powers as it needs for the protection of its proprietary interests. But if the land is actually used in execution of any of the constitutional powers of the United States it is beyond such control by the state as will defeat its use for that purpose.

6. A state may cede to the United States jurisdiction over land to be used by the United States for governmental purposes; but in so doing it may reserve such authority as will not interfere with the use for which the land is designed. In such a case jurisdiction over the entire tract passes to the United States even if only part of it is made use of by the federal government.

7. The United States can not by compact with a state secure such control over lands disposed of as will deprive the state of its equal position. But, by granting land upon a condition subsequent, it can exact from the grantee compliance with the condition under penalty of forfeiture of title to the land.

Having now determined the source and extent of the authority of the

federal government over the public domain, we are prepared to consider the manner in which that authority has been exercised. Here, too, it will be convenient to consider the lands of the United States in a number of divisions.

Unreserved Portions of the Public Domain

In earlier sections of this discussion we have seen that over the unreserved portions of the public domain the United States has complete control prior to the admission of the territory as a state, but, after such admission, only such control as is necessary for the protection and disposal of its land. In either case its legal power is sufficient to protect its land from occupation, from use, and from injury.

The problem which first came before the federal government was how to protect its western lands from occupation by the so-called "squatters." The pathetic struggle between these men and the national authorities, which finally led to the preëmption law, has been described in a former chapter.

Since the adoption of this law the attitude of the federal government toward the use of its land by the bona fide settler has been distinctly friendly. Thus, in 1878, when an appropriation was made to investigate trespass and fraudulent entries on the public domain it was expressly provided that no money appropriated should be used to collect any charge for wood or timber cut on the public lands for the use of actual settlers in territory where timber lands were not surveyed and offered for sale.[30] And two years later it was provided that there should be no suit for trespass after entry and payment of the price of the lands trespassed upon.[31]

Use and occupation of the public lands have taken a somewhat different form in the western states, where it has been customary for ranchmen to enclose large areas of government land for grazing purposes. In order to stop this unfair practice Congress in 1885 declared all enclosures of public land without color of title unlawful. The district attorneys were directed to institute civil suit against apparent violators of the law. In case an enclosure should be found to be unlawful decree was to be made for its destruction, unless removed within five days. In case the enclosure should be less than one hundred sixty acres, however, no suit was to be brought without the authority of the secretary of the interior.[32] In interpreting this law the Supreme Court held that a fence around a township in which the government owned every even-numbered section was an "enclosure," notwithstanding that the fence was set several feet outside of the township line and in no case on government land. It thus appears that even within the limits of a state, so far as is necessary for the protection of its land, the police

[30] *Statutes at Large*, 20: 46.
[31] *Ibid.*, 21: 237.
[32] *Ibid.*, 23: 321-322.

power of the United States extends not only over the land it owns, but also over the adjacent land.

In 1906 it was made a criminal offense to appropriate, injure, or destroy any historic or pre-historic ruin or monument, or any object of antiquity situated on lands owned or controlled by the United States, except with the permission of the department having jurisdiction over such lands. The same law directs the president to set apart such historic places by proclamation.[33] Wilfully setting fire to grass on the public domain or allowing a camp-fire to burn unattended is punishable by a fine not to exceed $5,000 or by imprisonment for not to exceed two years, or both.[34] Moving survey marks may entail a maximum fine of $250 or six months' imprisonment.[35]

Timber Lands and Forest Reserves

Perhaps the most important question before the federal government in the administration of its timber lands has been the question of the prevention of forest fires. Yet nearly a century passed by before the United States put a law upon its statute books looking toward the prevention of this danger, a century of shameful waste of a priceless natural resource, such as the history of the world can scarcely parallel.

The act of 1897 was the first stringent law on this subject. It provided that any person who should wilfully or maliciously set on fire any timber, underbrush, or grass upon the public domain, or should negligently leave fire to burn unattended near any timber or other inflammable material, should be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars or by imprisonment for not more than two years, or both. Irrespective of negligence, malicious intent, or disastrous result, it was made a misdemeanor to leave a camp-fire burning unattended near any forest or inflammable material on United States land. In this case the maximum punishment was one thousand dollars' fine and one year's imprisonment. The fines collected were to go to the public school fund of the county in which the offense should be committed.[36] This is substantially the law in force to-day.[37] Similar provisions apply to Indian reservations, and to lands allotted to Indians and inalienable without the consent of the government.[38]

A second important question in the administration of the federal forest lands has been the protection of the timber from the depredations of timber thieves. The necessity for some protection was first recognized in connection with the lands reserved for naval purposes. An act of 1817 authorized the secretary of the navy to reserve for the use of the navy live oak and red cedar lands and made it an offense punishable by fine and

[33] *Ibid.*, 34: 225.
[34] *Ibid.*, 31: 169-170.
[35] *Ibid.*, 29: 343.
[36] *Ibid.*, 29: 594.
[37] *Ibid.*, 35: 1098-1099.
[38] *Ibid.*, 36: 857.

imprisonment to cut or remove any timber from such lands, or live oak or red cedar timber from any United States land. The carrying of such timber with the knowledge of the consignee, master, or owner rendered the vessel liable to forfeiture, and, if to a foreign country, the captain liable to a heavy fine.[39] In 1833 it was made the duty of all collectors of customs in Florida, Alabama, Mississippi, and Louisiana, before allowing a clearance to any vessel bearing live oak timber, to ascertain that such timber had been cut from private lands or, if from government lands, with the consent of the navy department. Customs officers were required to institute suit for depredations on live oak timber growing on the public lands.[40] These acts, however, afforded protection to only a very small portion of the federal timber lands. An act of 1859 made it an offense punishable by a fine of not over five hundred dollars and imprisonment for not over twelve months to cut or wantonly destroy any timber on United States lands reserved for military or other purposes.[41]

With the exception of laws aiming to protect the timber on reserved lands, it is only within the last decades that the government has taken active measures to protect its timber lands from the depredations of timber vandals. So characteristic of the administration of the timber lands has been this policy of inaction that in 1893, in a timber trespass suit, it was seriously contended before the Supreme Court that the government had tacitly consented to the cutting of timber on its unreserved land.[42] Such a contention, of course, was not conceded. In Stone v. United States[43] it was held that entry on United States land with a view to settlement did not give the right to cut and sell any timber except such as might be taken from land intended for immediate cultivation. The present law, which went into operation in 1909, forbids the cutting, the removal, and the wanton destruction of any timber growing on public lands of the United States, the maximum punishment being one thousand dollars' fine and one year's imprisonment. The same penalty is to be imposed upon the owner, master, or consignee of any vessel, and the owner, director, or agent of any railroad knowingly transporting such timber.[44] An act of 1906 forbids the chipping of trees on the public land for pitch, turpentine, or other substance and makes it unlawful for any person who has knowledge of the facts to purchase or otherwise acquire timber products obtained in this manner.[45]

An interesting movement set on foot by Congress in 1911 is that for coöperation between the states and the national government in the protection of the watersheds of navigable streams. The secretary of agriculture

[39] *Laws of the United States*, 6: 174-175.
[40] *Ibid.*, 8: 812-813.
[41] *Statutes at Large*, 11: 408.
[42] United States *v.* Mock, 149 *United States*, 273.
[43] Stone *v.* United States, 167 *United States*, 178, 192-194.
[44] *Statutes at Large*, 35: 1098.
[45] *Ibid.*, 34; 208.

was authorized to make an agreement with any state or group of states for coöperation in the organization and maintenance of a system of fire protection on any private or state forest land situated on the watershed of a navigable river. Two hundred thousand dollars was appropriated for this purpose and several million dollars were appropriated for the acquirement by the United States of forest lands at the headwaters of navigable streams. The lands acquired are to be administered as national forests under the act of 1891. Civil and criminal jurisdiction of the states within the area acquired is not to be affected except as punishment of offenses against the United States is concerned.[46]

At the beginning of the nation's history, when the art of war had discovered no better material for the construction of battleships than hardwood timber, it was customary for Congress to reserve large areas of oak timber land to supply the needs of the United States navy. We have already referred to the measures taken to protect these reserves from trespassers. But the naval battles of the Civil War, by demonstrating the overwhelming superiority of the steel-clad battleship, made the reservation of timber for naval purposes unnecessary. Not until the renewed interest in the forest lands of the United States, which developed in the last decade of the nineteenth century, were there again extensive forest reservations. The purpose was now a twofold one, namely, to ward off a prospective lumber famine and to protect the headwaters of the nation's great rivers. A few of these reservations have been set apart by Congress,[47] but most of them by order of the president under authority of the act of 1891.[48] In 1897 Congress declared that the establishment of these reservations should not interfere with the civil and criminal jurisdiction of the states except in so far as the punishment of offenses against the United States was concerned.[49] This act, it would seem, from the Supreme Court decisions we have considered, is merely declaratory of what was the law without it. By the same measure it was provided that the secretary of the interior should make provision for the protection of the federal forest reserves against injury by fire and unlawful cutting of timber. In 1905 the care of these forests was transferred to the department of agriculture.[50]

Game and Bird Preserves

In 1905 the president was authorized to designate certain parts of the Wichita Forest Reserve for the protection of game. In the reserved area hunting, trapping, and capturing game are forbidden under severe penalties, except under regulations prescribed by the secretary of agriculture.[51] Sub-

[46] *Ibid.*, 36: 961.
[47] *Ibid.*, 26: 650-651.
[48] *Ibid.*, 1103; 29: 899-912.
[49] *Ibid.*, 30: 36.
[50] *Ibid.*, 33: 628.
[51] *Ibid.*, 614.

sequent laws have made similar provisions with reference to other forest reserves.[52] An act of 1906 makes it unlawful to hunt, trap, capture, or wilfully disturb any bird or to take the eggs of birds on lands reserved as breeding grounds.[53]

The national parks also serve as game and bird preserves. The unorganized territory of Alaska has been under the absolute control of Congress and, although not a game preserve, has, from the time of its purchase, been subject to federal game laws aiming to prevent the extermination of the fur-bearing animals.[54] The law of 1908 is very drastic. It provides for an open and a closed season, limits the number of animals that may be killed, prescribes the size and character of the shot gun that may be used, forbids the use of dogs and power-boats in the pursuit of game, prohibits the sale of the hides of game animals at all times when the killing of such animals is forbidden, requires hunting licenses for non-residents and shipping licenses from residents, and affidavits from persons desiring to send game out of the territory to the effect that they have complied with all the requirements of the law. In order to prevent the commercialization of the sport the shipper is also required to state under oath that the trophy is his own, has not been sold, and is not intended for sale. It is unlawful for anyone to deliver to any common carrier and for the master of any vessel to receive for shipment any wild birds, except eagles, or any heads, hides, or carcasses of brown bear, caribou, deer, moose, mountain sheep, or mountain goats, unless accompanied by the required license and the affidavit referred to above.

In asking for a shipping license the applicant must state whether the heads or trophies to be shipped will pass through Portland, Seattle, or San Francisco. The governor of the territory must notify the collector of customs of the proper port, of the name of the holder of the license, and the name and address of the consignee. And the collectors of customs at the ports mentioned are forbidden to enter any consignment of game from Alaska unless notice has been received from the governor of the territory or the secretary of agriculture checking with the name and address of the shipment.

A person violating any provision of this act is guilty of a misdemeanor punishable by forfeiture of all game or birds in his possession and all contrivances used in capturing such game and, for each offense, by a fine of not to exceed two hundred dollars and imprisonment for not to exceed three months, or by both.

For the enforcement of the law the government relies upon its marshals, collectors of customs, revenue cutter officers, and game wardens.

Congress, necessarily, had to exempt the natives of Alaska from some

[52] *Ibid.*, 34: 607.
[53] *Ibid.*, 536-537
[54] *Ibid.*, 15: 241.

of the provisions of the act. They are permitted at all times to kill game animals and birds for food and clothing. Miners and explorers are likewise exempted when in need of food.[55]

National Parks

Commencing with the Yellowstone National Park in 1872,[56] Congress has set apart twelve large areas of land as national parks, all but the first of these since 1889.[57] The Hot Springs Reservation in Arkansas and the Sulphur Springs Reservation in Oklahoma also deserve to be classed as national parks, although they do not bear the name.

In the extent of federal jurisdiction the Yellowstone National Park, the Hot Springs Reservation, and the Sulphur Springs Reservation are in a class by themselves. When the state of Wyoming was admitted into the Union in 1890 the act of admission expressly reserved to the United States exclusive "legislation," "control," and "jurisdiction" over the park as it then existed or as it might thereafter be extended, except that the state might serve civil and criminal process.[58] The validity of this reservation has not been passed upon by the Supreme Court. An act of 1894 declares that all laws applicable to places under the exclusive jurisdiction of the United States shall be in force in the park. The states of Montana, Idaho, and Wyoming are, however, permitted to serve civil and criminal process within it. In case any offense is committed within the park, the punishment for which is not provided by any United States law or any regulation of the secretary of the interior, the offender is liable to such punishment as is provided by the statutes of Wyoming.

All animals are absolutely protected, except dangerous animals, and these also except when it is necessary to kill them to protect human life. No fishing is allowed except in accordance with rules prescribed by the secretary of the interior. These regulations have been so rigidly enforced that the increase in big game has greatly outrun the food supply.[59]

The secretary of the interior, under authority given by the above act, has issued detailed regulations looking toward the protection of the natural curiosities, the timber and game, and controlling the use of the park roads.[60] A United States commissioner appointed by the judge of the United States district court has jurisdiction to hear all complaints for the violation of the laws and regulations for the protection of the park, and to hold a preliminary hearing in case of felony.

[55] *Ibid.*, 35: 102.
[56] *Ibid.*, 17: 32.
[57] Casa Grande Ruin, Ariz., Mar. 2, 1889; Sequoia, Cal., Sept. 25, 1890; Yosemite, Cal., Oct. 1, 1890; General Grant, Cal., Oct. 1, 1890; Mt. Rainier, Wash., Mar. 2, 1899; Crater Lake, Ore., May 22, 1902; Platt, Oklahoma, July 1, 1902, and Apr. 21, 1904; Wind Cave, S. D., Jan. 9, 1903; Sully's Hill, N. D., Apr. 27, 1904; Mesa Verde, Cal., June 29, 1906; Glacier, Mont., May 11, 1910.
[58] *Statutes at Large*, 26: 222.
[59] *Ibid.*, 28: 73-74.
[60] "Report of the Acting Superintendent of the Yellowstone National Park," *Reports of Department of Interior*, 1911, *Administrative Reports*, 1: 575-578, C. S., 6222.

The state of Arkansas ceded jurisdiction over the Hot Springs Reservation in 1903 and Congress accepted the cession the next year. The state, however, is allowed to serve process and to tax the private property within the reservation.[61] The laws governing other places under the exclusive jurisdiction of the United States are in force here. In addition to these there are special police regulations prescribed by Congress or the secretary of the interior aiming to promote the health and safety of the patrons of the baths, which in 1911 numbered one hundred thirty thousand. The enforcement of these regulations has been rendered comparatively easy by reason of the fact that the government has absolute control of the water of the springs. If a private bath-house fails to comply with the sanitary regulations prescribed its lease is canceled and the water is turned off. If it seeks a renewal of its lease it can be required to construct a new bath-house of approved material and design. One of the most serious problems which the government has had to meet has been that of "drumming" for patronage, by doctors, hotelmen, and the keepers of bath-houses. This evil has been checked in much the same way. In order to protect the patrons of the baths from the quack doctors of the city of Hot Springs no doctor who is not registered is allowed to prescribe baths in the spring waters. If a registered doctor solicits business his registration is canceled. No person staying at an hotel which solicits business is allowed to use any of the baths. And if the keeper of a bath-house is guilty of "drumming" he loses his water permit. This mode of procedure has almost eradicated the evil.[62] Only such persons as make affidavit that they are indigent are allowed to use the free government bath-house.[63]

The government provides for the inspection of the bath-houses. It requires all attendants to take such a course of instruction as may be prescribed by its medical director, and to pass a written examination. The schedule of prices for all private bath-houses is fixed by the government.

In the enabling act of Oklahoma Congress reserved exclusive jurisdiction over the Sulphur Springs Reservation.

Over the other national parks the United States has only such jurisdiction as is necessary for the protection and use of its property.[64] All detailed regulations are left to the secretary of the interior. The rules in force are similar to those for the Yellowstone Park.

Military Reservations and Government Buildings

It has been the policy of the United States government to secure complete jurisdiction over its military reservations. This has been done either

[61] *Statutes at Large*, 33: 187.

[62] "Report of the Superintendent of the Hot Springs Reservation," *Reports of Department of Interior, 1911, Administrative Reports*, 1: 733-769, C. S., 6222.

[63] *Statutes at Large*, 36: 1015.

[64] The State of Washington has tendered exclusive jurisdiction over the Mt. Rainier National Park, but the tender has not been accepted by Congress.

by reservation of jurisdiction at the time of the admission of the state in which such reservation is situated, or by subsequent cession of jurisdiction by the state, or by acquiring title with the consent of the state government. An act of 1844 provided that no public money should be expended upon lands to be purchased by the United States as sites for armories, arsenals, forts, fortifications, navy-yards, custom-houses, lighthouses, or other public buildings of any kind, until the proper state had given its consent to the purchase.[65] Under the clause of the Constitution to which we have called attention the purchase of land with the consent of the state gives the United States exclusive jurisdiction. In accordance with this act, in making appropriations for federal buildings in the various cities throughout the United States, it has been customary to make the grant of public money contingent upon the cession of jurisdiction by the proper state. Similarly, in establishing national military parks on the historic battle-fields of the Civil War, it has been provided that the act of establishment should not be operative until the cession of jurisdiction to the United States.[66]

In exercising its jurisdiction over the places under its exclusive control Congress, at its first session, provided for the punishment of the more serious felonies.[67] An act of 1825 made the punishment for offenses committed within these reserved areas but not specially provided for by the United States depend upon the law of the state in which the land is situated.[68] Minor regulations are left to the head of the department which has jurisdiction over the territory, or to his subordinates.

It is a criminal offense to injure any statue, monument, or similar structure located within a national park.[69] An act of 1911 imposes heavy penalties upon any person attempting by means of sketches, photographs, or otherwise, to obtain information concerning national defense secrets.[70]

Over soldiers' homes Congress has not aimed to secure exclusive jurisdition. But without such jurisdiction certain state police laws do not apply. Ohio v. Thomas[71] raised the question whether a state law regulating the use of oleomargarine was binding in a United States soldier's home. The Supreme Court held that federal officers in discharge of their duties in the management of a federal institution are not subject to the jurisdiction of the state in regard to those matters which have the approval of federal authority.

[65] *Laws of the United States*, 10: 175.
[66] *Statutes at Large*, 26: 333; 28: 597; 30: 841.
[67] *Laws of the United States*, 2: 92.
[68] *Ibid.*, 7: 394.
[69] *Statutes at Large*, 29: 621.
[70] *Ibid.*, 36: 1084.
[71] Ohio *v.* Thomas, 173 *United States*, 276, 282.

PART III

THE ADMINISTRATION OF THE PUBLIC LANDS IN A TYPICAL STATE, MINNESOTA

CHAPTER I

GENERAL SURVEY OF THE LAND GRANTS TO MINNESOTA

To a citizen of the commonwealth a knowledge of the public lands of Minnesota, their acquisition and administration, becomes a matter of some moment when he considers that one third of the area of the state has come to it as the gift of the nation and that the objects to which the resulting funds have been devoted touch him directly on every hand, as a tax-payer and as a beneficiary in the heritage. With the proceeds of these vast land holdings Minnesota is in part supporting her common schools, university, and charitable institutions. Liberal grants of land made possible the rapid development of Minnesota railroads. Various public improvements have received assistance from the same source. And the funds derived from the sale of one class of lands have been applied to the liquidation of the "Railroad Bonds," which were issued by the state in the late fifties, thus removing the stain of repudiation which for twenty-four years had clouded the state's fair name.

A number of states have squandered their inheritance of land. In this respect Minnesota has shown more wisdom than some of her neighbor states. Yet, she, too, has many things to regret. There have been mistakes and fraud in legislation and administration. Lack of the necessary knowledge, judgment, or integrity, or a combination of these, has resulted in the loss of millions to the permanent school fund. Theft and fire have cut deep into the state's timber heritage. A large amount of iron ore has been rendered inaccessible because of the careless methods of mining companies, free to follow their selfish policy because of the lack of inspection.

A discussion of these problems should be of more than state-wide interest. More and more the American commonwealths are coming to note and to profit by the legislative and administrative experiments of their sister states, as the corrupt practices acts, the primary election laws, and the commission plans of city government bear witness.

Nor is the question of mere passing interest. Four of the funds derived from the sale of state lands are permanent. Their total amount will depend upon the wisdom and integrity of the state's legislators and administrators, past and future. And here is the significant point: there is still a future. The last chapter of the story of the public lands has not been written, and how the story shall be told still rests with the citizens of the state.

Moreover, there are fifteen states younger than Minnesota. Some of these but yesterday took up the responsibility of land administration. Minnesota has lessons for them, both of warning and of guidance.

Before taking up the discussion of the administration of the public lands in Minnesota it seems desirable to consider the manner in which the state acquired title and the conditions upon which the lands were bestowed, for the terms of the grants have in a large measure determined their later history.

The first federal act setting aside any portion of the territory within the later state of Minnesota for a public purpose was the Ordinance of 1785, which reserved section sixteen in each township of the Northwest Territory for the support of common schools. This law, however, applied only to that portion of the state east of the Mississippi.

During the first half of the nineteenth century all or part of Minnesota at some time or other formed part of the territories of Indiana, Louisiana, Illinois, Missouri, Michigan, Wisconsin, and Iowa. Unlike the organic act of Minnesota the corresponding enactments for these territories made no reservations of land for common schools. Most of these organic acts, however, extended the rights, privileges, and advantages guaranteed by the Ordinance of 1787 to the inhabitants of the respective territories, and thus, presumably, the very indefinite provision concerning the encouragement of schools and the means of education.[1]

The federal land grants to the state fall into nine well-defined classes, distinguished from one another primarily by the difference in the purposes to which they might be applied. These nine classes are the internal improvement, school, salt spring, university, public building, railroad, swamp, agricultural college, and the park and forestry lands.

The first land grant affecting Minnesota was the internal improvement grant of 1841, which provided that upon admission to the Union each new state should receive 500,000 acres of land for purposes of internal improvement. This was the grant which was later to give rise to the internal improvement land fund, of which the people of the state were to hear so much in the sixties and seventies.[2]

In 1849, in the organic act of Minnesota, it was provided "that when the lands in the said territory shall be surveyed, under the direction of the government of the United States, preparatory to bringing the same into market, sections sixteen and thirty-six in each township in said territory, shall be, and the same are hereby reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same." This, it is clear, was not a grant, but merely a reservation. Another act was necessary in order to transfer title.

The next act reserving public land for Minnesota was passed February 19, 1851. This directed the secretary of the interior to reserve from sale a

[1] *Laws of the United States*, 3: 367, 603, 608, 632; 4: 198-199, 438; 9: 310.
[2] *Ibid.*, 10: 157.

quantity of land not exceeding two entire townships for the use and support of a university in the territory.[3]

The enabling act of Minnesota, passed February 26, 1857, granted to the state four classes of land: the school lands, reserved in 1849 by the organic act, the state university lands, the public building lands, and the salt spring lands.[4] That part of this law in which we are interested is in the form of a proposition to the constitutional convention at St. Paul to grant these lands to the state on condition that the convention insert a clause in the constitution, or pass an ordinance irrevocable without the consent of Congress, agreeing to the following conditions:

"1. That said state shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulation Congress may find necessary for securing the title in said soil to bona fide purchasers thereof.

"2. That no tax shall be imposed on lands belonging to the United States.

"3. That in no case shall non-resident proprietors be taxed higher than residents."

In return for complying with these requirements the United States agrees:

"1. That sections numbered sixteen and thirty-six in every township of public land in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools.

"2. That seventy-two sections of land shall be set apart and reserved for the use and support of a State university, to be selected by the Governor of said State, subject to the approval of the Commissioner of the General Land-Office, and to be appropriated and applied in such manner as the legislature of said State may prescribe for the purpose aforesaid, but for no other purpose.

"3. That ten entire sections of land, to be selected by the Governor of said State, in legal sub-divisions, shall be granted to said State for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the legislature thereof.

"4. That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use; the same to be selected by the Governor thereof within one year after the admission of said State, and when so selected, to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: Provided, That no salt spring or

[3] *Statutes at Large*, 9: 568.
[4] *Ibid.*, 10: 167.

land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall, by this article, be granted to said State.

"That five per centum of the net proceeds of sales of all public lands lying within said State, which shall be sold by Congress after the admission of the said State into the Union, after deducting all the expenses incident to the same shall be paid to said State, for the purpose of making public roads and internal improvements, as the legislature shall direct."[5]

These grants were alike in a number of important particulars. Except in the case of the salt spring grant, Congress designated the use to which the lands might be devoted. It was, however, expressly left to the legislature to prescribe the exact manner in which three of the four grants should be applied. Where the grant did not specify definite tracts of land the governor was authorized to make the selection.

The grant of sections sixteen and thirty-six in each township of public land in the state did not include all the sections so designated. Not only were sections sold or otherwise disposed of not embraced in the grant, but it was later held by the Supreme Court of the United States that lands included in Indian reservations at the time of the grant were not public lands within the meaning of the act.

More serious complications, however, arose from a resolution passed five days later. Many settlers in the territory had opened farms, erected buildings, and improved townsites on unsurveyed land which after the survey proved to be school land. Anxious to safeguard their interests the legislature requested Congress to allow them to retain their holdings, and to permit townsites occupied before the survey to be entered notwithstanding the prior reservation of the land for schools.[6] It was in response to this memorial that Congress passed the troublesome resolution of March 3, 1857. That resolution complied with the requests of the Minnesota legislature and added another restriction to the grant, namely, that if the lands had been "reserved for public uses before the survey" other lands should be selected by the proper authorities.[7] The justice of the call for relief by bona fide settlers is undeniable, but the relief given went far beyond what was necessary for their protection.

Next came the railroad grants. When Minnesota became a territory its only means of communication with the settled portions of the country was by steamboat down the Mississippi. This method was slow at best, and in winter all traffic had to be suspended. Thus the news of the passing of the organic act in the winter of 1849 did not reach St. Paul before the breaking of the ice in Lake Pepin in the spring. The organization of

[5] *Ibid.*, 11: 167.
[6] *Laws of Minnesota*, 1856, 368, Memorial no. 33.
[7] *Statutes at Large*, 11: 254.

Minnesota as a territory quickened the influx of settlers. On an average population increased at the rate of twenty thousand a year during the territorial period. A vast amount of fertile land awaited the plow of the pioneer, but without the railroad the wealth of the prairies was not accessible.

In 1851 the legislature petitioned Congress for a grant of land to assist in the building of a railroad from St. Paul to Milwaukee.[8] Several other memorials followed.

The response was generous. In 1854 Congress donated to the territory for the purpose of aiding in the construction of a railroad from the southern line of the state, by way of St. Paul, to the eastern line in the direction of Lake Superior, the alternate odd-numbered sections within six miles of the road.[9] This act was repealed the same year.[10] From 1857 to 1866, however, several similar grants conveyed vast areas of land to Minnesota to be thus applied.[11] The total amount exceeded 8,000,000 acres, nearly one sixth of the total area of the state.

The largest single grant came to the state in 1860, when the provisions of the swamp land grant of 1850 were extended to Minnesota.[12] By July 31, 1912, 4,788,712 acres had been approved or patented to the state under this act, and claims were still pending.[13]

It will be remembered that the act of 1851 merely ordered the reservation of land for a university. Some question having arisen as to whether this was sufficient to justify the action taken by the interior department in patenting these lands to the state, an act was passed in 1861 by which the land reserved for the territorial university was granted to the state. The question then arose whether this fulfilled the provisions of both the act of 1851, which had reserved lands for a territorial university, and the enabling act, which had made a similar provision for a state university. The state held that the second act contemplated a double university grant. This led to a protracted controversy with the land office at Washington, which will be discussed later. The outcome, however, should be stated here. In 1870 Congress passed an act directing the commissioner of the general land office to approve the selections made to the amount of seventy-two sections, without taking into account the lands reserved at the admission of the state into the Union and donated to the state in 1861.[14]

In 1862, 120,000 acres were added to the state's prospective domain by the agricultural college grant.

In 1868, 200,000 acres of land were granted to Minnesota to aid the

[8] *Laws of Minnesota*, 1851, pp. 44-45, Memorial no. 4; 1855, p. 159, Memorial no. 4.
[9] *Statutes at Large*, 10: 302.
[10] *Ibid.*, 575.
[11] *Ibid.*, 11: 195; 12: 625; 13: 64, 74, 526; 14: 87.
[12] *Ibid.*, 12: 3.
[13] *Auditor's Report*, 1911-1912, p. 16.
[14] *Statutes at Large*, 16: 196. It should be noted that this act contains a misstatement. It was the lands reserved in 1851 and not those reserved at the admission of the state into the Union that were given in 1861.

state in improving the navigation of the Mississippi from the Falls of St. Anthony to the mouth of the Minnesota by the construction of a lock and dam at Meeker's Island. This land was to be selected by an agent appointed by the governor. Unless the improvement should be completed in two years the land was to revert to the United States.[15] No work was done. It is interesting to find that after the lapse of half a century the federal government has undertaken the work.

From 1868 to 1892 no additional lands were given. But in the latter year the movement for the preservation of American forests found expression in an act granting to the state all unappropriated federal lands in thirty-five specified sections near the headwaters of the Mississippi, where the legislature had established Itasca State Park the year before. Unless the state uses the land exclusively for park purposes and protects the timber, the grant reverts to the United States.[16]

In 1904 there followed a grant of 20,000 acres for experimental and forestry purposes. This was to be selected by the state land commissioner and forestry board from third- and fourth-rate public lands lying as nearly contiguous as possible. No tract could be included which, in the opinion of the United States forester, should make part of a federal forest reserve.[17]

In 1905 a small island in Bartlett Lake, in Koochiching County, was granted for a park and forest reserve,[18] and two years later, Cooper Island in Cass Lake. The latter being part of an Indian reservation and heavily wooded, the state was required to pay such consideration as might be agreed upon between the secretary of the interior and the governor.[19] The transaction is yet to be completed.

Many sections of school land were preëmpted before the survey was completed. A large part of the salt spring lands were lost through blunders of the federal officials. University lands were entered by homesteaders through ignorance of the fact that the state claimed ownership. School lands in Indian reservations were sold by the United States government. In place of most of the land lost the state has been authorized to select other lands of equal area.

At the end of the first half-century of its history as a state, Minnesota has received from the federal government nearly seventeen million acres, or about twenty-six thousand square miles of land. Claims for a large area of swamp land are still unadjusted. When these have been adjudicated the total will perhaps pass seventeen million acres, a region as large as Massachusetts, Rhode Island, Connecticut, Vermont, and a third of New Hampshire, or about one third of the area of the state.

[15] *Statutes at Large*, 15: 169.
[16] *Ibid.*, 27: 347.
[17] *Ibid.*, 33: 536.
[18] *Ibid.*, 1001.
[19] *Ibid.*, 34: 352.

CHAPTER II

THE APPRAISAL, SALE, AND LEASE OF THE STATE LANDS

In order to simplify this discussion and secure consecutive treatment for each topic the subject matter of this chapter will be treated under the following headings: the mode of appraisal, lease, and sale; placing the lands on the market; and the present status of the grants.

As a territory Minnesota had no public lands that could be sold. The territorial period, therefore, for the purposes of this chapter, may be passed.

The state constitution imposed a healthy check upon those who for private gain might have desired to hasten the sale of the school lands. It provides as follows: "Not more than one-third of said lands may be sold in two years, one-third in five years, and one-third in ten years; but the lands of the greatest valuation shall be sold first: provided, that no portion of said lands shall be sold otherwise than at public sale."[1]

In his first message Governor Ramsey made a remarkable plea for a careful stewardship of the state lands. Some of the older states had thrown their lands on the market at any price. In 1839 the superintendent of common schools of Ohio wrote: "It is not uncommon to find land sold for fifty, forty, thirty, ten, and in one case even as low as five cents per acre. Men have become purchasers of whole sections for a mere trifle, and that sometimes where it only required a few years to have realized five, ten, fifteen, or twenty dollars per acre."[2] Wisconsin allowed her school lands to pass into the hands of speculators at less than two dollars an acre. Iowa entrusted the sale of the lands and the investment of the funds to inefficient county officers. The governor pointed to the mistakes of the earlier states in order to emphasize the danger of ill-considered legislation. Most important among his suggestions were the following:

1. That the financial supervision of the public lands should be vested in a separate central department at the seat of government.

2. That the land commissioner should be entrusted with the entire superintendence and disposition of the state lands, and the state treasurer with the care of the funds.

3. That lands should not be sold before they would bring a fair price. Five to eight dollars an acre was suggested for the school lands.[3]

The legislature followed many of the governor's suggestions. The first,

[1] *Constitution of Minnesota*, art. 8, sec. 2.
[2] Knight, "Land Grants for Education in the Northwest Territory," American Historical Association, *Papers*, 1: no. 3, 61.
[3] "Annual Message of Governor Ramsey," *Minnesota Executive Documents*, 1860, pp. 22-23.

however, was not adopted, and Minnesota has reason to regret that it was not.

In 1861 the first act for the appraisal, sale, and lease of school lands was passed. For an initial measure it is fairly complete. There was created a board of commissioners of school lands, consisting of the governor, attorney general, and superintendent of public instruction, which was entrusted with the general supervision of the sale and leasing of school lands.

Before any part of the public domain could be either leased or sold it was desirable to determine its value. This work was entrusted to boards of appraisers, consisting of three men, one, the state appraiser of school land, appointed by the board of land commissioners, one appointed by the county commissioners of the county, and one by the supervisors of the town in which the land was situated. Each appraiser was required to take an oath that he would discharge his duty to the best of his ability, that he was not interested directly or indirectly in the school lands or the improvements on them, and had entered into no combination to purchase any part of them. Obviously the purpose of these provisions was to guard against under-appraisal.

Permanent improvements had been made on many school sections by persons who had occupied them without authority. So numerous were these trespassers that the legislature concluded to give them a legal status by authorizing them to change their trespassing occupation into a lease. But future occupation was forbidden under penalty of a fine not to exceed one hundred dollars. Persons knowing of illegal occupancy might report the matter to a justice of the peace of the county, who was given authority to hear the case and order imprisonment, not to exceed three months, until the fine should be paid. Any balance left after paying the cost of the trial was to go to the school fund of the county. County sheriffs were directed to remove trespassers from the lands.

The annual rental of the school lands was fixed at five per cent of the appraised value of the land and improvements. But grass and cranberry land might be leased upon the terms best calculated to increase the state's revenue. For this purpose the chairman of the board of supervisors of the proper town, or any other suitable person, might be authorized to take charge of such lands.

The appraisers were required to divide the land into lots of a size suitable for sale, one hundred sixty acres being fixed as the maximum size for lots of agricultural land and ten acres for timber lots outside of the pine lands. Village lots might be platted by special direction of the board.

As soon as the lands in any county had been appraised persons who desired to purchase might submit offers to the state auditor, the register of the board of land commissioners. When the number of bids from any one

county appeared sufficient to warrant the expense of a public sale, the board might direct the auditor of the proper county to advertise a sale of the lands for which there were bids and of other lands. Six days' notice of the sale had to be given by the county auditor. Each lot or tract was to be offered separately. No land was to be sold for less than the appraised value nor for less than seven dollars an acre.

Each purchaser was to receive from the county auditor a certificate of sale giving title to the land as against any party except the state. Delinquency in payments for a period longer than six months rendered this certificate void, whereupon the board of county commissioners might take possession and resell or lease the premises. It was, however, provided that at any time before the land had been resold or leased the payment of the sum due with interest and costs occasioned by the delay together with five per cent damages upon the whole sum due should reinstate the original certificate. No deed could be secured before the land had been paid in full. Lest the purchaser should strip the land of its timber and minerals, and then leave it, he was forbidden to cut any timber, except for fuel and permanent improvements, and to remove any minerals, except by permission of the board of county commissioners.

Under the provisions of the act the terms of payment were as follows:

1. All payments had to be made in specie.
2. Twenty-five per cent of the purchase money must be paid to the county treasurer on the day of purchase, together with interest at six per cent on the balance to the first of the following November.
3. Notes bearing six per cent were to be given for the balance, payable in one or more installments at any time within twenty years.
4. The interest on the unpaid principal was to be paid annually in advance to the treasurer of the proper county.
5. Payment for land the principal value of which consisted of timber had to be made in full on the day of sale or security given upon unencumbered real estate worth twice the amount of the unpaid balance. In case of default such mortgages were subject to foreclosure by the county commissioners.[4]

A feature of this act characteristic of the period is the large share in the administration given to local officers. The board of supervisors of the various townships were to appoint one member of the board of appraisers for their township, and the county commissioners another; the latter were to foreclose the mortgages; trespass cases were put under the jurisdiction of the justices of the peace; the sales were to be held by the county auditors and the payments to be made to the county treasurers; and county sheriffs were to remove trespassers. Perhaps such a system tended to lower the cost of

[4] *Laws of Minnesota*, 1861, chap. 14.

caring for the state lands, but it may well be questioned whether the additional cost of a more centralized administration would not have been more than balanced by increased returns. To cite the instance in which the loss to the state was most obvious the appraisal of the state lands may be mentioned. As the majority of each board was appointed by local officers from men of the county and town in which the land was situated they were subject to the influence of local opinion, which always favored a low appraisal.

No lands were sold under the provisions of the act of 1861. The minimum price had been put too high. Moreover, the legislature of 1861 had created two boards of commissioners to care for the public lands, the board of commissioners of school lands, whose duties have been discussed above, and the board of commissioners of public lands, with general supervision of all classes of state lands. The duties of these two boards overlapped, and although they consisted of exactly the same officers, the result was confusion.[5] The governor and auditor called the attention of the legislature to the inconsistency of these acts.[6] To correct these mistakes and to improve the law in other particulars, both the acts of 1861 were repealed in 1862. Instead of a board, the state auditor, as ex-officio commissioner of the land office, was given general supervision of all lands belonging to the state or which might come into its possession.

Having now the general field of legislation before us it will make the subsequent development clearer if we follow each feature of the law separately.

In 1861, as pointed out above, one member of each board of appraisal was appointed by the board of supervisors of the town in which the land was situated, and one by the county commissioners of the county. The third was the state appraiser, appointed by the board of commissioners of school lands. In 1862 provision was made for a separate board of appraisers for each county in which the land commissioner might desire an appraisal of school land, one of the members to be appointed by the land commissioner, and the other two by the county commissioners.[7]

In 1895 the manner of appointing the appraisers was again changed. The governor was authorized to appoint one for each county, the land commissioner another, and the county commissioners the third. This was a step toward a more centralized administration, the majority of each board being now appointed by state officers.[8]

But the work of appraising state lands was not done efficiently. Many inexpert persons were appointed appraisers. Not infrequently their work was affected by local considerations or prejudices. Often they paid no

[5] *Ibid.*, chaps. 13-14.
[6] "Auditor's Report," in *Minnesota Executive Documents*, 1861, p. 563; "Governor's Message," in *Minnesota Executive Documents*, 1861, p. 14.
[7] *Laws of Minnesota*, 1862, chap. 62, secs. 16, 46.
[8] *Ibid.*, 1895, chap. 163, sec. 6

attention to the timber on the land, and in several cases delinquent lands were appraised at such a high price as to prohibit their resale. Thus the delinquents were continued in possession. Moreover, the cost of appraisal was high. In the two-year period ending July 31, 1900, 54,163.76 acres were appraised, at a cost of $6,316.50, or $4.64 for each forty-acre tract. In 1900 the auditor suggested that the work of appraisal of state lands be entrusted to the regular state cruisers and estimators.[9] This plan was adopted in part in 1905 by requiring that the man appointed by the auditor should be one of the regular state cruisers, not a resident of the county in which the lands are situated. The man appointed by the governor, however, may be a resident of the county,[10] and the third man, being appointed by the county commissioners, is certain to be. It follows that the majority of the boards of appraisal may still consist of local men.

In 1858 a law was passed for the selling of the grass on school lands by the chairman of the board of supervisors in each town, the proceeds to be paid into the county treasury for the benefit of the school fund.[11] But virtually no sales were made. During the year 1860 only ten dollars was realized.[12]

The act of 1861, referred to above, authorized the board of commissioners of school lands to lease grass and cranberry lands and school lands on which there were improvements.[13] By the end of the year about 50,000 acres of improved lands had been leased. But many settlers considered the rent, five per cent of the appraised valuation, exorbitant, and declared that if compelled to pay they must abandon the land. The auditor suggested a reduction[14] and in 1862 the legislature provided that rent should be paid on only that part of the land actually improved.[15]

In 1863 the legislature tried the experiment of assessing the rent of leased land as a tax, the town and city assessors being directed to appraise the value of the school lands that were improved and occupied and the county auditors to place upon the personal property tax rolls, as rent, a tax of seven per cent per annum upon the assessed valuation.[16] This cumbersome provision was repealed in 1878.[17]

An act of 1863 authorized the land commissioner to lease from year to year the grass privilege and the right to gather cranberries and make maple sugar on school lands.[18] The authority to lease school lands for these purposes was omitted in 1877, when the act was amended,[19] but the land commissioners took it upon themselves to continue the policy, although without

[9] *Auditor's Report*, 1899-1900, p. 28.
[10] *Laws of Minnesota*, 1905, chap. 162, sec. 1.
[11] *Ibid.*, chap. 58, sec. 1.
[12] "Auditor's Report," in *Minnesota Executive Documents*, 1860, p. 7.
[13] *Laws of Minnesota*, 1861, chap. 14, secs. 18, 23.
[14] "Auditor's Report," in *Minnesota Executive Documents*, 1861, pp. 562-563.
[15] *Laws of Minnesota*, 1862, chap. 62, sec. 22.
[16] *Ibid.*, 1905, chap. 162, sec. 1.
[17] *General Statutes of Minnesota*, 1878, chap. 122, sec. 1.
[18] *Laws of Minnesota*, 1863, chap. 12, sec. 55.
[19] *Ibid.*, 1877, chap. 56, sec. 11.

specific statutory authority. In 1889 authority was given to the land commissioner to lease the hay and grass privilege for the term of one year. This act applied to all state lands.[20]

In 1909 a new lease law was passed. After state land has been offered for sale it may be leased for grazing purposes for a period of five years. On the second Tuesday in April the county auditors are to receive bids. The annual rental, which is payable in advance, is fixed at not less than ten cents an acre. The county auditors retain ten per cent of the amount received and remit the balance to the state auditor, who places it to the credit of the fund to which the land belongs.[21]

The old lease law, however, was not repealed, so the land office is trying to operate under both. The resulting confusion should be remedied by the repeal of both acts and the enactment of a new lease law.

In 1891 the legislature authorized the land department to lease the public building lands at a minimum annual rental of fifty cents an acre, one fourth of the income to go to the road and bridge fund of the township in which the lands are situated, one fourth to the revenue fund of Kandiyohi County, and one half to the general school fund of the state.[22] Although the minimum rental was fixed at fifty cents an acre all of the lands were leased.[23] But the lands were low and needed to be drained. As the state was not ready to undertake the work the lands were leased to Kandiyohi County, the income for the first three years to be used by the county in draining the land and thereafter to be paid into the state treasury.[24] This plan proved beneficial to both the state and the county. The county constructed ditches through the lands, greatly increasing their value and assisting in developing this part of the county.[25]

The returns from leases of state lands have been as follows for the years indicated:

Fiscal year ending Dec. 31, 1862[26]	
Rent of school lands	$3,195.53
Grass and cranberry privilege	372.87
Fiscal year ending Nov. 30, 1871[27]	
Grass privilege	383.80
Fiscal year ending Nov. 30, 1882[28]	
Grass privilege	1,293.11
Fiscal year ending July 31, 1892[29]	
State's one-half of rental from public building lands	1,938.26

[20] *Ibid.*, 1889, chap. 22, sec. 8.
[21] *Ibid.*, 1909, chap. 191.
[22] *Ibid.*, 1891, chap. 132.
[23] *Auditor's Report*, 1891-1892, p. 13.
[25] *Ibid.*, 1897-1898, p. 35.
[26] *Ibid.*, *Minnesota Executive Documents*, 1862, p. 557.
[27] *Ibid.*, 1871, p. 13.
[28] *Ibid.*, 1882, p. 9.
[29] *Ibid.*, 1891-1892, p. 35.

Fiscal year ending July 31, 1902[30]	
Grass privilege	4,108.17
Fiscal year ending July 31, 1912[31]	
Grass privilege	1,480.57

In 1862 the supervision of the sale of state lands was taken from the county auditors and given to the commissioner of the land office, who was required to publish the notice for eight successive weeks before the sale in some newspaper of the county, or, if there was no county paper, one having a general circulation in the county. This notice was to contain a list of the lands to be sold and to state the time and place of sale.[32] Two years later the period of advertisement was reduced to six weeks.[33]

The manner of giving notice was changed again in 1895. The act of that year provided that before each sale a notice including descriptions of all lands that would be offered should be printed once a week for four successive weeks in a St. Paul newspaper and in a newspaper of the county in which lands were to be sold. In case there was no newspaper in the county notice was to be posted in three conspicuous places in the county four weeks prior to the sale.[34] In 1905 there was added the requirement that notice of the time and place of the sale should be posted on the front door of the court-house at least three months before the day of the sale.[35] The last act on this subject, passed in 1911, is still more specific in its requirements. The county paper must be published at the county seat. The St. Paul paper must be a daily. The period of publication, however, was not changed. The notice is now required to state the time and place of sale, the limitations and requirements of the law in regard to purchases, the conditions of payment, and the place where lists of the land to be offered for sale may be obtained. The state auditor is required to prepare and distribute plats showing what lands are subject to sale.[36]

All state lands sold except the salt spring lands and a small portion of the university lands have been disposed of at public sale.

The act of 1861 required that school lands should be sold within the county in which such lands were situated.[37] Two years later, however, it was provided that pine lands might be sold at such place as the land commissioner might designate.[38]

Sales were conducted by the land commissioner. In his report for 1868 that officer suggested that sales in certain counties should be discontinued and the lands in those counties sold at public sale at the state capitol.[39] But

[30] *Ibid.*, 1901-1902, p. 54.
[31] *Ibid.*, 1911-1912, pp. 75-76.
[32] *Laws of Minnesota*, 1862, chap. 62, sec. 47.
[33] *Ibid.*, 1864, chap. 15, sec. 5.
[34] *Ibid.*, 1895, chap. 163, sec. 9.
[35] *Ibid.*, 1905, chap. 162, sec. 1.
[36] *Ibid.*, 1911, chap. 123, secs. 3-4.
[37] *Ibid.*, 1861, chap. 14, sec. 26.
[38] *Ibid.*, 1863, chap. 12, sec. 1.
[39] "Auditor's Report," in *Minnesota Executive Documents*, 1867, p. 461.

instead of following his suggestion the legislature authorized him to appoint a deputy to sell the land in the eleven counties specified.[40]

In 1864 each county auditor was directed to act as clerk of the sales of school land in his county.[41] In 1877 he was allowed to make the sales if authorized to do so by the land commissioner.[42] This authority was withdrawn in 1911.

In 1911 monthly sales were required to be held from April to November in the seven counties where most of the remaining state land outside of the mineral area is located, Koochiching, Beltrami, Cass, Itasca, St. Louis, Aitkin, and Roseau. The time and frequency of sales in other counties was left to the discretion of the land commissioner. This act also provided for the appointment of an official known as the manager of the sales department and required all sales to be held by this officer, or by the state auditor or his deputy.[43]

The act of 1862 lowered the minimum price of school lands from seven to five dollars, a change which previous and later experience proved to be necessary.[44] The same minimum price was later fixed for the other classes of state lands, except the salt spring lands and swamp lands not set apart for state institutions.[45] The minimum price of swamp lands was set in 1881 by an amendment to the constitution at two thirds of the minimum for school lands. This, however, was increased by statute in 1907 to five dollars an acre, the minimum for the other state lands. The same act provided for the addition of the cost of drainage to the minimum price of all state lands except the salt spring lands.[46] This law retarded the sales of swamp lands. In many cases it raised the minimum price of drained lands to ten or twelve dollars an acre, which was too high.[47] The next legislature substituted for this provision the requirement that drainage improvements should be duly considered by the state land examiner in making appraisals.[48]

It should be noted that no lands can be offered at less than the appraised value, so that the minimum is generally higher than five dollars an acre. In 1912 the appraised value of most of the lands offered in several counties was eight dollars.[49] But even the appraised price was too low. In Kittson County railroad lands of the same quality were finding buyers at prices from twenty to fifty per cent higher, although the terms of sale were not as favorable. Nor can competitive bidding always be relied upon to bring the selling price up to the fair market price. Understandings be-

[40] *Laws of Minnesota*, 1868, 185. Joint Resolution no. 1.
[41] *Ibid.*, 1864, chap. 15, sec. 3.
[42] *Ibid.*, 1877, chap. 56, sec. 8.
[43] *Ibid.*, 1911, chap. 123, secs. 1-2.
[44] *Ibid.*, 1862, chap. 62, sec. 7.
[45] *Ibid.*, 1865, chap. 9, sec. 1; 1868, chap. 55, sec. 1; 1875, chap. 95, sec. 3; 1901, chap. 177, sec. 1; *Constitution of Minnesota*, art. 4, sec. 32b.
[46] *Laws of Minnesota*, 1883, 3; 1907, chap. 366, sec. 1.
[47] *Auditor's Report*, 1907-1908, p. 25.
[48] *Laws of Minnesota*, 1909, chap. 118, sec. 1.
[49] *Auditor's List of State Lands*, 1912.

tween purchasers by which natural competitors divide the offerings are inevitable.

In 1862 the cash payment was reduced from twenty-five to fifteen per cent of the selling price. The time for paying the balance was left as before, twenty years, but the rate of interest was advanced to seven per cent.[50] The requirements to secure the payment of interest were made very strict, only six days being allowed after the regular date of payment before the certificate of sale was to become void.[51] The previous act had allowed six months. After such forfeiture the commissioner might take possession and sell the land again. Up to the day of sale, however, the first purchaser might redeem by paying to the state treasurer all costs incurred and twice the amount of interest due.[52]

This requirement worked a great deal of hardship during the locust visitation of the seventies. The legislature, therefore, in 1877 authorized the land commissioner to allow the county treasurers to receive the overdue interest with seven per cent interest thereon from the time it became due, in lieu of double interest, in case the purchaser had been unable to pay at the proper time because of destitution, accident, or misfortune.[53] This provision gave rise to much work without corresponding benefits. In 1884 the land commissioner recommended that both provisions should be repealed and the interest on unpaid interest be fixed at twelve per cent.[54] This change was made in 1885. Under this act, which is still in force, a purchaser who has forfeited his rights by failure to pay interest at the time due, may, at any time before the resale of the lands, redeem by paying the amount of interest due on his certificate of purchase, costs, and twelve per cent per annum on the interest and costs from the date of delinquency.[55]

In 1877 the time of payment was extended to thirty years.[56] In 1885 the rate of interest on future sales was reduced from seven per cent to five,[57] the purpose being to discourage early payments. Rather than pay seven per cent interest on money due the state the purchasers of public lands borrowed the money at lower rates and paid in full. This was quite satisfactory as long as there were public securities in which the funds could be invested at as high rates or higher. But by 1885 the interest rates on state and national bonds had taken such a downward plunge that it was impossible to make investments at rates higher than from three to four per cent. Later in the same session the legislature came to the conclusion that it would be wise to extend the provisions of the act to past sales. Holders of certificates with interest paid to date were authorized to return them

[50] *Laws of Minnesota*, 1862, chap. 62, sec. 8.
[51] *Ibid.*, sec. 10.
[52] *Ibid.*, sec. 20.
[53] *Ibid.*, 1877, chap. 56, sec. 5.
[54] *Auditor's Report*, 1883-1884, p. 43.
[55] *Laws of Minnesota*, 1885, chap. 64.
[56] *Ibid.*, 1877, chap. 56, sec. 3.
[57] *Ibid.*, 1885, chap. 195, sec. 1.

to the land commissioner with a signed statement to the effect that the balance of the purchase money would not be paid for fifteen years. The interest would then be reduced to five per cent. In case they should decide to pay earlier they might do so by paying the interest in full at the old rate.[58] This proved to be a wise change. During the two-year period following, payments on land contracts were reduced by more than one half.[59]

But holders of the seven per cent contracts were slow to avail themselves of the provision of the act of 1885. During the fiscal year ending July 31, 1890, three per cent of the principal on the seven per cent contracts was paid and only three-fifths per cent on the five per cent contracts. The state auditor therefore recommended that the interest on all outstanding contracts should be reduced to five per cent without any restrictions.[60]

In 1893 the legislature adopted the change suggested and extended the time of payment to forty years.[61] But even with these reductions the state treasury received more money on outstanding land contracts than could be invested to advantage.[62] In 1901 the rate of interest was reduced to four per cent on all sales, past and future, providing that payment was not made within ten years from the date when the act was passed, or within ten years after the day of sale, in which case the old rate would hold.[63] The result was a marked decrease in the total amount of the annual payments.

Nearly every legislature has passed laws to protect purchasers of state land from the operation of regulations which were working injustice. Conspicuous among these acts and typical of one class were those passed during the grasshopper period of the late seventies. By the terms of sale of state lands the failure to pay interest on the unpaid balance for a period of six days after the payment fell due rendered the buyer's certificate of purchase void. This was no hardship in ordinary times, but proved extremely oppressive in 1875 and the years following, when vast swarms of locusts did all the harvesting. Large numbers of purchasers could not make their annual interest payments and thus lost title to their lands. The injustice of the operation of this law was so obvious that, commencing in 1876, the legislature for a number of years passed acts directing the land commissioner, upon application for relief, to abate the penalty for failure to pay interest. Such application had to have the approval of the auditor and treasurer of the county.[64]

Even when it was the mistake of the administrative officers which inflicted losses upon purchasers, such officers were often powerless to give re-

[58] *Ibid.*, 1885, p. 271.
[59] *Auditor's Report*, 1885-1886, p. 38.
[60] *Ibid.*, 1889-1890, p. 12: 1891-1892, p. 13.
[61] *Laws of Minnesota*, 1893, chap. 106, sec. 1.
[62] *Auditor's Report*, 1899-1900, p. 18.
[63] *Laws of Minnesota*, 1901, chap. 91, sec. 1.
[64] *Ibid.*, 1878, chap. 98; 1877, chap. 109; 1878, chap. 81.

lief. Thus, when the same piece of land was sold twice it required a special act to reimburse the second purchaser for his payments.[65] In such cases the appropriation was generally made from the general or permanent fund that had profited by the mistake.[66]

Many school contracts were not paid within the forty-year period allowed. In 1911 the legislature authorized the auditor to receive payments and execute patents on such tracts up to December 31, 1912.[67]

The legislature of 1905 passed an act designed to prevent speculation in state lands. Each purchaser of state lands was required to comply with one of the following conditions: he must fence twenty-five per cent and convert it into pasture land; cultivate five per cent of it; or build a house on the land and live there for twelve months.

One of these conditions had to be fulfilled within five years. The purchaser was required to furnish the state auditor satisfactory proof of having lived up to his contract before the end of that period. His statement had to be attested by two members of the school board of the district in which the land was situated. If such proof was not submitted within the required time the land was to revert to the state and all payments made to be forfeited. Henceforth no purchaser was to be permitted to buy more than three hundred twenty acres.[68] Attorney General Smith holds that this provision applies to all sales to persons or corporations made after the passing of the act, but that it is not retroactive. It does not, however, prevent a person who has purchased three hundred twenty acres from acquiring additional state land by assignment from others. It is obvious that this makes possible the evasion of the law.

In 1911 all purchasers were released from the conditions of the act of 1905.[69] That act was repealed and a new act passed embodying the same requirements but allowing seven years in which to fulfill them.[70]

In 1862 timber lands were divided into two classes, pine lands and lands chiefly valuable for their growth of timber, but which were not pine lands. The former had to be paid for in full on the day of purchase, while only seventy-five per cent of the purchase price of the second class had to be paid at that time.[71] From 1863 to 1877 pine lands might be sold at such place as the land commissioner might designate.[72]

In 1877 the laws governing the sale of timber lands were improved in a number of particulars. Pine lands were not to be sold until the timber thereon had been estimated, appraised, and sold.[73] This provision was im-

[65] *Ibid.*, Extra session, 1881, chap. 99.
[66] *Ibid.*, 1881, chap. 100; 1885, chap. 282.
[67] *Ibid.*, 1911, p. 589, Joint Resolution No. 3; *Auditor's Report*, 1911-1912, p. xxv.
[68] *Laws of Minnesota*, 1905, chap. 299.
[69] *Ibid.*, 1911, chap. 135, sec. 1.
[70] *Ibid.*, chap. 90.
[71] *Ibid.*, 1862, chap. 62, sec. 8.
[72] *Ibid.*, 1863, chap. 12, sec. 1.
[73] *Ibid.*, 1877, chap. 56, sec. 1.

portant. The men who wanted the timber as a rule did not want the land and would pay no more for the land and timber than for the timber alone.[74] It had, however, been the policy of the university regents and the land commissioners not to sell pine lands, so the state did not suffer from the defect in the law.

It had become customary to buy land partly timbered, make the first payment, clear the timber, and then leave the denuded ground to the state. In order to prevent this practice it was provided that whenever land containing pine timber, but in quantities insufficient to be classed as pine lands, were sold, the value of the timber should be paid in full at the time of sale.[75]

The next change came in 1885,[76] when the cut-over pine lands were thrown on the market in response to a rising demand for these land for agricultural purposes.[77] Such lands were to be sold on the same terms as other lands.

An act of 1878 granted a hundred-foot right of way to any railroad company that had constructed or was proposing to construct a railroad over school, swamp, agricultural college, or internal improvement lands, upon payment of the appraised value.[78] In 1885 the university lands were added upon the same conditions.[79] In 1881 the grant for a right of way over swamp lands was increased to one hundred fifty feet,[80] but the provision was repealed in 1905.[81]

Up to 1885 the county treasurers collected the money due on state land contracts without additional compensation. By an act of that year these officials became entitled to a fee of one-half per cent on all money collected, interest and principal, to be paid from the interest fund of the land on which payment was made.[82]

The legislation relating to mineral lands commenced in 1889. As a separate chapter is devoted to this phase of the land administration there is mentioned here only the provision authorizing the land commissioner to endorse across all patents to lands in St. Louis, Lake, and Cook counties the words, "All mineral rights reserved to the state."[83] This act was neither phrased in terms to make it obligatory upon the land commissioner to reserve the mineral rights nor did it apply to all the counties in which minerals were later discovered. These defects were not remedied till 1901, when the present act went into operation. This act reserves for the state all coal, iron, copper, gold, or other valuable minerals which may be found upon any land owned or to be owned by the state in virtue of any

[74] "Auditor's Report," 1867, in *Minnesota Executive Documents*, 1867, p. 463.
[75] *Laws of Minnesota*, 1877, chap. 56, sec. 2.
[76] *Ibid.*, 1885, chap. 102, sec. 2.
[77] *Auditor's Report*, 1883, p. 1; 1884, p. 64.
[78] *Laws of Minnesota*, 1878, chap. 73.
[79] *Ibid.*, 1885, chap. 42.
[80] *Ibid.*, 1881, extra session, chap. 69.
[81] *Revised Laws of Minnesota*, 1905, chap. 108, sec. 5534.
[82] *Laws of Minnesota*, 1885, chap. 102, sec. 4.
[83] *Ibid.*, 1889, chap. 22, sec. 9.

act of Congress. It directs the land commissioner to see that the provision is inserted in every deed conveying public land, but declares that failure on his part to do so shall not affect the state's title. This secures to the state all minerals on lands not sold before the passage of the act. As new iron ore deposits are coming to light each year and some of these in sections far distant from known ore regions, this provision may prove of great importance.

In 1861 the school lands were placed on the market.[84] Four years later the agricultural college lands were added, and the laws concerning the appraisal, sale, and lease of school lands were extended to them.[85] After 1868 the university lands might be sold upon special request by the Board of Regents.[86]

In 1870 the legislature directed the land commissioner to advertise a sale of the 500,000 acres of internal improvement lands, to be held that year at the capitol. The sale, however, was not to take place unless the owners of the Railroad Bonds should deposit with the state auditor bonds to the value of $2,000,000 and agree to buy lands to the amount of the bonds deposited. The minimum price of the lands was fixed at $8.70 an acre. But although the value of Minnesota Railroad Bonds at this time was very uncertain, the holders were not willing to exchange them for wild land, and nothing came of the legislature's proposal.[87] This is the only act that has provided for the sale of public land at the state capitol.

From 1868, when the university lands were transferred to the care of the land commissioner, to 1873, all the public land of Minnesota was under the control of that officer and all the lands sold were disposed of under his supervision. But in 1873 the salt spring lands were transferred to the control of the regents of the University of Minnesota, to be sold in such manner as they might direct, consistent with the law.[88] The land commissioner very properly objected to this encroachment upon his field, but the legislature did not restore the lands to his control.[89]

Two years later provision was made for the sale of the swamp lands set apart for state institutions.

In 1881 an amendment to the constitution added the balance of the swamp lands to the territory that might be sold.[90] The manner and terms of the sale were to be the same as for school lands except that the minimum price was reduced by one third. By statute, however, the minimum price of swamp lands has been raised to the same level as for other state lands.[91] After 1881 the land department has had authority to sell five classes of

[84] *Ibid.*, 1861, chap. 14.
[85] *Ibid.*, 1865, chap. 9, sec. 1.
[86] *Ibid.*, 1868, chap. 55, sec. 1.
[87] *Ibid.*, 1870, chap. 13.
[88] *Ibid.*, 1873, chap. 133, sec. 1.
[89] "Auditor's Report," in *Minnesota Executive Documents*, 1875, p. 5; 1876, p. 331.
[90] *Laws of Minnesota*, 1881, chap. 4, sec. 1; 1883, p. 3.
[91] *Ibid.*, 1909, chap. 118, sec. 1.

lands: the university, agricultural college, school, internal improvement, and swamp lands. The Board of Regents has had like authority over the salt spring lands. The public building lands were the only lands not on the market. As early as 1875 the state auditor urged the legislature to give the necessary authority.[92] But this was not done till 1901.[93]

The first sales of public lands were held in 1862, when 38,247 acres of school lands were sold for $242,876. Thus the permanent school fund had its beginning. Since 1862 sales of school land have been held every year, the amount sold ranging from 1,219 acres in 1895 to 108,292 in 1902. The average annual sale has been 41,571 acres. To a person who has lived in one Minnesota community during the past two decades and seen the land advance in value one thousand per cent or more it is at first surprising to find that the state lands have brought a nearly uniform price from the first sale to the last. Comparing the average price received for school lands at ten-year intervals we find that in 1865 it was $5.98 an acre; in 1875, $5.65; in 1885, $5.71; in 1895, $5.10; and in 1905, $5.77. The highest average is that for 1902, $9.78 an acre. This uniformity is accounted for by two circumstances. In the first place, the provision of the constitution to the effect that the most valuable lands should be sold first compelled the land commissioner to offer for sale first the lands in the more populous sections of the state. Sound business policy and the demand of public opinion dictated the same course. Moreover, it has been the settled policy of the land department to sell land only in counties where the desirable homestead lands had been taken. Thus, the first sales were made in the southern and southeastern counties, where the first settlements were made. Then, as population moved westward and northward and took up the available homesteads, the land sales followed. For this reason the first sales in the various counties came at about the same stage in their development. In the second place, the natural desire of the early settlers to buy choice farms even at somewhat higher prices led them to buy the choice quarters at the first sale. Thus, the first sales in each county, when settlers were few and land prices low, brought nearly as high prices as the sales of the inferior tracts at a later period. The average price received for school lands in 1862 was $6.35 an acre; in 1912, $6.63.

In the amount of sales from year to year there has been considerable fluctuation, due in part to the varying policy of the land department, and in part to exterior circumstances. The hard times of the early seventies and the early nineties reduced the land sales by about one half. The grasshopper visitation of the late seventies produced a like result.

The total sales of school lands by July 31, 1912, was 2,119,233 acres; 838,953 remain.[94] The average price an acre has been $6.33 and the total

[92] "Auditor's Report," 1875, in *Minnesota Executive Documents*, 1875, p. 5.
[93] *Laws of Minnesota*, 1901, chap. 177.
[94] *Auditor's Report*, 1911-1912, p. 4.

returns to the permanent school fund $13,476,253.74, which is a little more than half of the total fund.[95]

To trace in detail the sales of the other state lands would be tedious and unprofitable. But it may be worth while to point out the present status of each grant. Of the 94,439 acres of agricultural college land, every acre is sold, the total returns being $559,528.39, an average of $5.92 an acre.[96] Of the 91,565 acres of university lands the state now owns 19,304. Of the land disposed of, between fourteen and fifteen thousand acres were used to pay the debts of the territorial university and 1,920 were conveyed to Henry Beard in payment for services rendered in securing the second university grant. The remainder, 55,452 acres, has produced $350,880.74, an average of $6.32 an acre.[97] Of the 500,000 acres of internal improvement lands, all but 5,504 acres have been sold, the total returns being $2,815,530.63, an average of $5.71 an acre.[98] Of the swamp lands, 2,892,962 acres have been given away. Railroad companies have received the lion's share, 2,858,594 acres. Four thousand six hundred eighty-four acres have gone to the building of the Madelia and Sioux Falls Wagon Road. A like area was given to McLeod County in trust for Stevens Seminary at Glencoe, in return for giving up the state agricultural college; and 25,000 were granted to the Cannon River Manufacturing Association for developing the water power and manufacturing resources of the Cannon River. The state has sold 283,567 acres of the swamp lands, for which $1,815,889 have been realized, an average of $6.40 an acre. This leaves 1,612,183 acres which have been patented or approved, and several hundred thousand more to which the state is seeking to establish title. The railroad lands, 8,313,880 acres, have all been transferred to the land grant companies. The 6,395 acres of public building lands brought $125,443, an average of $19.62 an acre.

Of the 17,000,000 acres which the state has received as owner or trustee it now has title to a little over 2,500,000.[99]

[95] *Ibid.*, 6.
[96] *Ibid.*, 10. The auditor gives the average price per acre as $5.47. This is not correct.
[97] *Auditor's Report*, 1911-1912, pp. 8-9.
[98] *Ibid.*, 12.
[99] *Ibid.*, 15, 22-23.

CHAPTER III

THE ADMINISTRATION OF THE TIMBER LANDS

In an old and thickly settled community necessity drives the people to conserve the timber resources. But when an older community pours its overflow population into a new country to become tillers of the soil the forest is a natural enemy that must be destroyed. Consequently large areas of timber land are hewed down and burnt merely to make room for the plow. This attitude toward the forest still exists in some sections of northwestern Minnesota, where many people hail the forest and prairie fire as a friend that renders valuable assistance in clearing the land. In a frontier community this attitude toward the forest barrier is natural and inevitable, and on the whole not undesirable, for it is one of the primary principles of forestry that the best agricultural land shall not be used for growing timber. But the thing to be lamented is that the attitude of hostility and indifference toward timber growing on farming lands extends to the forest in general. There can be little doubt that this in part accounts for the frequent occurrence of forest fires in the timbered areas of the state.

The lumberman was on the scene early. When Minnesota entered the Union the eastern states had already made such heavy inroads upon their timber that they were turning to the new states of the northwest to meet the ever-increasing demand. Individuals bought thousands of acres of heavily timbered land from the United States government at almost nominal prices. Lumber companies secured the preëmption rights of settlers who entered timber land with such a transfer in view. Indians and other holders of scrip gave to lumbermen the power of attorney to locate the scrip for them. Some of this scrip permitted relocations to be made. Of this privilege the lumbermen made use to strip tract after tract of its timber, altering the location as soon as the last large pine had fallen. Another way in which the lumber vandals secured possession of the public timber was to secure title or color of title to one tract in the heart of a heavily wooded area and then to cut the timber on the adjoining tracts.

Most of the state timber has been sold. It is only within the last decade and a half that the state and national governments have come to think seriously of practical forestry. But with more than half of the pine lands stripped of their timber, and even of their soil in many places, with similar conditions prevailing in other forest states, and with a constantly growing demand for the products of the forest, both the state and the national government have begun to take steps to set aside timbered areas as national

and state forest reserves, to reforest cut-over lands, and to administer these lands on scientific principles. This indicates in brief the problems to be met and solved by the state government of Minnesota in the administration of its timber lands: the sale of the state timber, the prevention of trespass, the prevention and control of forest fire, and the development of a state forest. A consideration of the first three follows.

In 1861, when state lands were first put on the market, the government was confronted with the problem of how to safeguard the timber on the land sold until the purchase price had been paid. The experience of some of the older states had shown that purchasers of timber lands often stripped the land of its merchantable pine and then let their contracts lapse, so as to make the land revert to the state in an almost worthless condition. The legislature of 1861, realizing the danger, sought to protect the interests of the state by dividing the lands into two classes: lands principally valuable for their timber and other lands. Purchasers of the first class of lands were compelled to do one of two things. They must either pay the entire purchase price at the time of the sale or pay one fourth of this amount and give mortgage on unencumbered real estate worth twice the amount of the unpaid balance, as security for payment.[1] This, of course, gave ample protection to the state, but the law was nevertheless found unsatisfactory, for the reason that milling timber could be sold to better advantage separately than with the land.[2] The reason for this is plain. In the first place most of the lumbermen bought the forest land almost exclusively for the timber. They did not want the land and in making their bids based their calculations altogether upon the amount of pine. To the state, on the other hand, the land had some value, as much of it could be sold for agricultural purposes. Moreover, if the pine timber were sold separately and sold by measure, the state would know just what it was selling. In 1862 Auditor McIlrath recommended the separate sale of the state timber and suggested several other important modifications in the law relating to pine lands.[3] Most of these were adopted by the legislature the next year.

The land commissioner was given authority to grant permits for the cutting of timber on the school pine lands. It was made the duty of the surveyors general of logs and lumber in the several districts, whenever requested by the commissioner, to fix a minimum price per thousand upon any timber in the district. No such permit was to be granted other than at public auction and no bid could be accepted that did not equal or exceed the minimum price. Thirty days' notice of the sale had to be given in some paper published in the county or, if there was no county paper, in one having a general circulation in the county where the sale was to be held. The same

[1] *Laws of Minnesota*, 1861, chap. 14, sec. 38.
[2] "Auditor's Report," in *Minnesota Executive Documents*, 1867, p. 462.
[3] *Ibid.*, 1862, p. 589.

notice had to be published for thirty days in the official state paper.

The purchaser was not required to make any payment or to give security at the time the permit was granted. This was the most obvious defect in the law. It was, however, provided that all the timber cut under the provisions of the act should remain the property of the state until paid for in full. It should be noted that it was left to the discretion of the auditor whether the timber should be sold in this manner or sold with the land.[4]

This law continued in force till 1877, when the first comprehensive act was passed. The separate sale of the pine timber was then made obligatory[5] and only the timber liable to waste by fire, windfall, or otherwise could be sold.[6]

The place of sale was changed to the state capitol. Public notice of the auction was to be given by publication for sixty days in one or more of the daily papers of St. Paul.[7]

Because of the failure to require security to be given it had proved extremely difficult to make collections under the act of 1863. Auditor Whitcomb pointed out this defect to the legislatures of 1875 and 1876.[8] Collections were often far in arrears.[9] In order to prevent this difficulty the new law required each purchaser to execute a bond in double the estimated value of the timber included in his permit, with surety approved by the commissioner, guaranteeing the payment of the amount that might be found due when the timber had been cut.[10]

In order to satisfy the new law each permit had to contain a description of the land, the estimated amount of timber, the price per thousand, and the stipulated log mark. Each permit had to be recorded in the office of the surveyor of logs and lumber of the proper district. Property in the logs continued in the state until payment had been made.[11]

These changes made it necessary to place additional duties upon the surveyors of logs and lumber. Instead of requiring them merely to fix a minimum price per thousand on timber to be offered for sale it was provided that before any permit should issue the surveyor of logs and lumber of the district should make an estimate of the timber. showing the amount and value of the timber measuring more than eight inches, twenty-four feet from the ground, and of the timber below that standard. He was also required to describe the situation of the timber relative to risk from fire or other injury, and to state its distance from the nearest lake, stream, or railway.

Each surveyor of logs and lumber was further required to scale all

[4] *Laws of Minnesota*, 1863, chap. 12, sec. 8.
[5] *Ibid.*, chap. 56, sec. 2.
[6] *Ibid.*, sec. 11.
[7] *Ibid.*, sec. 12.
[8] *Auditor's Report*, 1874, p. 53; 1875, p. 53.
[9] *Ibid.*, 1874, p. 53.
[10] *Laws of Minnesota*, 1877, chap. 56, sec. 12.
[11] *Ibid.*, sec. 13.

logs cut in his district and to make a detailed report to the commissioner of the state land office before April first of each year. This report was required to give the name of the party cutting and the legal description of the land, the number of logs cut and the log mark, the total number of board feet and the value per thousand. Finally, the surveyor was required to state whether the cutting had been done according to the terms of the permit and, if not, the amount of damages due the state.[12]

Great care was taken so to frame the law that title to the logs could not pass before payment. Upon receipt of the above report it became the duty of the state auditor to draw duplicate drafts for the amount found due, one to be sent to the debtor and the other to the state treasurer. The debtor was then required to pay the amount stated in the draft to the state treasurer and to take duplicate receipts, one to be deposited with the state auditor. Not till then was the auditor authorized to receive payment, execute a release of the logs, and transfer the mark to the purchaser.

In case the draft was not paid within ten days after it had been delivered to the state treasurer he was directed to do one of two things. He could either seize the logs, sell them at public auction, satisfy the state's claim, and then pay any surplus that might remain, to the buyer, or he could direct the attorney general to proceed to collect the amount due upon the bond. But in no case were the logs to be released until the account had been adjusted.[13]

There was one more safeguard in the act, and that was important. It was a provision to the effect that any person having a contract with the state to cut timber on state land, who should place any but the agreed mark on the logs cut, should forfeit the logs and be held guilty of a misdemeanor punishable by a fine of from $500 to $5,000 or by imprisonment in the state prison for from one to three years, or both.[14]

A fourteen-year trial of the former law had proved it to be entirely inadequate to protect the state's interests. The ease with which fraud could be perpetrated invited dishonest dealing, and the state lost much valuable timber. The new law set up three safeguards against misappropriation of the state timber, the bond, the reservation of title and control over the timber until payment of the purchase price, and the criminal punishment of any attempt to evade the last provision. The result was a marked advance in the efficiency of this branch of the land administration.

The next change came in 1885. Some purchasers to whom timber was sold failed to execute the bonds necessary to complete the purchase. In order to guard against this contingency every person who had offered more than the estimated price was required to deposit a check for $100 before

[12] *Ibid.*, sec. 14.
[13] *Ibid.*, sec. 15.
[14] *Ibid.*, sec. 16.

having his bid accepted as a guaranty that he would execute the required bonds. In case this was not done within thirty days the deposit was forfeited to the proper permanent fund. It was also provided that all logs cut on state lands were to be marked with the letters M. I. N. in addition to the regular log mark. This was to be regarded as sufficient notice that the state owned the logs.[15] The purpose was to render it still more difficult for the buyer to transfer the logs to an innocent purchaser under pretense of ownership.

Another law of the same year provided that before pine timber could be sold the commissioner of the general land office should confer with the governor and treasurer. Only in case a majority of this board considered it desirable to sell the timber was the commissioner authorized to advertise it for sale.[16] In 1885, in State v. Shevlin-Carpenter Company, the state supreme court held that a sale made without the authorization of the timber board is void.[17]

But although substantial progress had been made toward the evolution of a good law much yet remained to be done before the act could be called satisfactory. In 1894 and 1895 the auditor[18] and the governor,[19] aroused, perhaps, by the disclosures which were being made by the pine land committee of the legislature, pointed out defects and suggested various alterations. Particularly unsatisfactory was the manner in which the appraising and scaling of the timber was being done. It will be remembered that the amount of timber reported for a given tract by the surveyor of logs and lumber determined the amount of the bond required of the purchaser. When the amount of timber had been greatly underestimated the required bond was insufficient to protect the state. The work of scaling the logs in order to determine the exact amount cut, fell to the same officers, and if they submitted an incorrect report there was no one to check up their error. Up to this time no bond had been required of these men.

In 1895 the legislature followed the suggestions of the governor, auditor, and pine land committee, and passed an act which, with some important amendments, is in force to-day. The main purpose of the new act, as indicated above, was to secure a correct appraisal and a correct scale. Instead of relying upon the reports of the surveyors of logs and lumber in their various districts the work of appraising the timber was now given to state estimators, who were to be appointed by the land commissioner. At least one of these estimators had to make an exhaustive examination of each parcel sold.[20] After making such investigation he was required to enter his report in his own handwriting in a book of appraisals kept at the office

[15] *Ibid.*, 1885, chap. 102, sec. 8.
[16] *Ibid.*, chap. 269, sec. 4.
[17] 62 *Minnesota*, 99.
[18] *Auditor's Report*, 1893-1894, p. 13.
[19] "Governor's Message," in *Minnesota Executive Documents*, 1894, 1: 26.
[20] *Laws of Minnesota*, 1895, chap. 163, sec. 11.

of the land commissioner. The estimator was required to include in his report the same facts as were called for by the act of 1877.[21] In addition he was required to state the number of hours the work had taken and that he was actually on the ground when he made his estimate—a rather interesting commentary on the manner in which some of the earlier appraisals had been made. This report had to be sworn to. Each estimator was required to file all his plats and field notes with the land commissioner.[22]

To be appointed estimator a person must have had at least five years' experience in the same line of work and be able to locate lands.[23] Before entering upon his duties he was required to take an oath and give bond for $5,000 for the faithful performance of his duties. The bond had to be approved by the commissioner.[24] Any false statement was punishable by a fine of not over $1,000 or imprisonment in a county jail for not over one year, or both.[25]

The governor, auditor, and treasurer were constituted a board of timber commissioners to pass upon the question whether the timber on any given tract was subject to sale under the act, that is, whether a sale was necessary in order to protect the state from loss. In this board the governor and one other member constituted a quorum. The board was authorized to summon witnesses and take testimony.[26]

In accordance with the request of Governor Nelson[27] the governor was empowered to appoint a special agent to investigate state timber lands in order to determine the correctness of the appraisal made by the state estimators.[28] This furnished the much-needed provision for checking up the work of the first appraisers, and incidentally, of the land commissioner as well.

The sales were made, as before, to the highest bidder, at public auction held at the state capitol. The act required a general notice of the sale to be published once each week in a daily St. Paul paper for five successive weeks commencing at least fifty-six days before the day of sale. Commencing at least thirty days before the day of sale a list of all the lands, the timber on which was to be sold, had to be published for three successive weeks. The same notice had to be posted for fifteen days preceding the day of sale in the offices of the auditors of the counties in which the lands were situated.[29]

It was, however, provided that the land commissioner might sell at the various county seats the stumpage on tracts not larger than one section

[21] *Ibid.*, sec. 12.
[22] *Ibid.*, sec. 13.
[23] *Ibid.*, sec. 14.
[24] *Ibid.*, sec. 15.
[25] *Ibid.*, sec. 16.
[26] *Ibid.*, sec. 18.
[27] "Governor's Message," in *Minnesota Executive Documents*, 1894, 1: 26.
[28] *Laws of Minnesota*, 1895, chap. 163, sec. 19.
[29] *Ibid.*, sec. 21.

when the timber did not exceed one hundred thousand feet. These sales were also to be made at public auction. Three weeks' notice of the sale had to be given in some newspaper of the county. The purchase price had to be paid in full at the time of sale.[30]

At the sale conducted at the state capitol each purchaser was required to pay twenty-five per cent of the appraised value of the timber and to take duplicate receipts from the state treasurer. Upon filing one of these receipts in the office of the land commissioner the purchaser could secure his permit, which was limited to two logging seasons.

This permit was required to state the description of the land, the amount of timber, the estimated value, the price per thousand, the log mark, and the time of expiration. The letters M. I. N. were to be marked on each piece in addition to the log mark. Any logs that did not bear both marks could be seized by the state. The purchaser also undertook to cut the timber clean, acre by acre, and "to cut and remove" the timber before the expiration of the permit. In case of failure to do this he was required to pay the permit price for all the timber which he failed to cut and remove.[31] In State v. Rat Portage Lumber Company the state supreme court held that 934,010 feet of timber, cut before but removed after the expiration of the permit, became the property of the state when the permit expired.[32]

Fifteen days before any cutting was done the purchaser was required to notify the land commissioner and the surveyor general of the district at what time he would begin work. Like notice had to be given before the removal of the timber.[33]

No permit could be issued for more than two logging seasons, but by unanimous consent of the timber commissioners a one-year extension could be given.[34] In State v. Shevlin-Carpenter Company a further extension was held to be void.[35]

The surveyors general of logs and lumber were required to scale the timber cut in their respective districts and to make a detailed report to the land commissioner by the fifteenth of May. In addition to stating the kind, character, and amount of timber that had been cut these reports were required to show in detail whether the cutting had been done according to the terms of the permit.

In order to check up the work of any of these men the land commissioner might serve notice upon him demanding a rescale of the timber on any given land. The surveyor general was then required to appoint one of his deputies to act with one of the estimators appointed by the land commissioner in

[30] *Ibid.*
[31] *Ibid.*, secs. 23, 26.
[32] 106 *Minnesota*, 1.
[33] *Laws of Minnesota*, 1895, chap. 163, sec. 23.
[34] *Ibid.*, sec. 24.
[35] 102 *Minnesota*, 470.

making a rescale. In case the first scale was substantially correct the state had to pay the surveyor general for making the rescale, otherwise not.[36]

Any surveyor general who failed to make a report complying with every requirement of the act became guilty of a misdemeanor punishable by imprisonment for not over one year or by a fine of $1,000, or both.[37]

Deputies of the surveyors general had to give bond in the sum of $1,000 and take an oath to perform their duties faithfully. No one in the employ of any logging firm could be appointed deputy and no deputy had the right to receive any remuneration from any firm which had cut or had a permit to cut any timber scaled or to be scaled by him. All compensation for scaling state timber was to be received from the state.[38]

Any deputy who failed to live up to any of the provisions of the act made himself liable to a fine of not over $500 or imprisonment in a county jail for not exceeding six months, or both.[39] Each surveyor general was given the power to appoint and remove his deputies.[40] But whenever the land commissioner should decide that a deputy was not acting for the best interests of the state or was incompetent he could take the matter up with the board of timber commissioners and if they by a majority vote confirmed his decision he might direct the surveyor general who appointed the deputy to discharge him.[41] The manner of collecting the money due on timber permits was left unaltered.[42]

Up to 1895 no provision had been made for the sale of any but pine timber. In the act of this year cedar and tamarac were also included.[43]

The act of 1895 was amended in 1905 in the following particulars. The attorney general was added to the board of timber commissioners. It was provided that no timber should be sold until two independent estimates had been made.[44] The former act called for but one estimate. This change had been recommended by Auditor Iverson.[45] The timber board, instead of the governor, was authorized to employ cruisers to investigate the correctness of the estimator's report. These cruisers, however, were required to report to the governor.[46] It was made the duty of every party about to cut timber on state land to post in a conspicuous place in the building occupied by his men a notice containing a full description of the land on which he intended to cut the timber, and to keep the notice posted during the entire time he was engaged in cutting. Violation of this requirement was made punishable by a fine not exceeding $100 or by imprisonment for

[36] *Laws of Minnesota*, 1895, chap. 163, sec. 27.
[37] *Ibid.*, sec. 28.
[38] *Ibid.*, sec. 31.
[39] *Ibid.*, sec. 33.
[40] *Ibid.*, sec. 31.
[41] *Ibid.*, sec. 34.
[42] *Ibid.*, sec. 36.
[43] *Ibid.*, sec. 11.
[44] *Ibid.*, 1905, chap. 204, sec. 13.
[45] *Auditor's Report*, 1903-1904, p. xxxiii.
[46] *Laws of Minnesota*, 1905, chap. 204, sec. 14.

a period not exceeding ninety days, or both, and a reward of $25 was offered for evidence leading to conviction.[47]

The legislature of 1909 added to the timber that might be sold at county auctions spruce, balsam, balm of Gilead, birch, and poplar. Before receiving his permit the purchaser is required to pay half of the appraised value of the timber and give a bond with sureties satisfactory to the land commissioner conditioned upon the performance of all the terms of the contract. All timber sold in this way is to be scaled or counted by the regular estimators, or land examiners, as they are now called, instead of by the deputy surveyors general. No timber is to be removed until so scaled or counted. Removal before such scale or count is declared to be a felony.[48] This act is the legislature's last word on this subject up to the present time.

The returns from the sale of timber on state lands to July 31, 1912, were as follows:[49] school lands,[50] $6,416,460.81; university lands,[51] $501,161.42; swamp lands,[52] $621,734.49; internal improvement lands,[53] $114,190.44.

Depredation commenced on the school and university timber lands during the territorial period and steps were taken to protect the timber. In 1852 the legislature declared it to be a misdemeanor punishable by fine or imprisonment to cut timber on school or university land.[54] Sheriffs, county commissioners, justices of the peace, constables, and school trustees were directed to obtain information concerning trespasses,[55] but no officer was designated to bring action to enforce the law.

Two years later each board of county commissioners was directed to collect from trespassers the full value of timber cut on school lands in their county. The money collected was to belong to the school districts of the county. Any board neglecting to perform this duty was subject to a fine of not less than $100 nor more than $500.[56]

The first state legislature, in 1858, followed the general plan adopted by the territory. Every person cutting, carrying away, or injuring timber or cutting grass on school, university, public building, or internal improvement land was subject to a fine of $50 for each offense.[57] Sheriffs and county commissioners, constables and justices of the peace were required to prosecute trespassers.[58] In case any one of these officers failed to bring action within ten days after receiving written notice with names of witnesses sufficient to prove a trespass he was to forfeit the sum of $25 to the county school fund.[59]

[47] *Ibid.*, sec. 41.
[48] *Ibid.*, chap. 476, sec. 16.
[49] These totals also include a small amount for improvements.
[50] *Auditor's Report*, 1911-1912, p. 6.
[51] *Ibid.*, 9.
[52] *Ibid.*, 15.
[53] *Ibid.*, 12.
[54] *Collated Statutes of Minnesota*, 1853, chap. 8, sec. 1.
[55] *Ibid.*, sec. 3.
[56] *Laws of Minnesota*, 1854, chap. 8, sec. 1.
[57] *Ibid.*, 1858, chap. 17, sec. 2.
[58] *Ibid.*, sec. 1.
[59] *Ibid.*, sec. 4.

In 1861 minor changes were made. It was made a misdemeanor for any owner of horses, oxen, asses, or mules to permit any person to use them for carrying away timber stolen from state land.[60] The act applied to all state lands.[61]

The provision for carrying the trespass law into execution was utterly inadequate. Many of the townships containing timber lands were not organized. In such localities there were no town officers to enforce the law, while in organized towns and counties local officers hesitated to take action. In 1861, when word was received that depredations had commenced on the university lands in Rice County, the legislature considered it necessary to employ a special agent to visit the locality to prosecute the trespassers.[62]

In 1862 the penalty for wilful trespass was increased to treble damages, in addition to fine and imprisonment. The county attorneys were directed to report all cases of trespass to the land commissioner and to prosecute when directed to do so by that officer. Judges were directed to charge the grand juries to inquire into cases of trespass on state land. All damages recovered were to be paid to the state treasurer to the credit of the proper fund.[63]

In 1862 and 1863 county attorneys reported seven prosecutions[64] for the cutting of timber on school lands, resulting in five convictions and two acquittals. Fines were imposed but apparently were not collected.[65]

In 1874 the land commissioner was given authority to take possession without legal process, of timber, grass, or other property unlawfully severed from state land, to sell it at private or public sale and to take any other action necessary to defend the interests of the state.[66] In State v. Galusha the supreme court held that this act authorized the land commissioner to effect a settlement of trespass cases.[67]

The same year each surveyor general of logs and lumber was required to protect the state timber land, to arrest trespassers, to seize all logs unlawfully cut, and to report to the land commissioner.[68] This was another makeshift provision for the safeguarding of the timber. The surveyors general were not appointed by the executive officer with whom they were directed to coöperate, but by the governor. They were not paid by the state, but by the very men whom they were directed to watch. Moreover, there were only six surveyors general and the district of each comprised approximately one sixth of the timbered area of the state.[69] With the utmost vigi-

[60] *Ibid.*, 1861, chap. 12, sec. 3.
[61] *Ibid.*, sec. 1.
[62] *Ibid.*, 344, Joint Resolution no. 6.
[63] *Ibid.*, 1862, chap. 62, secs. 32, 33, 34, 35, 37.
[64] There may have been others. The reports are not complete.
[65] "Attorney General's Report," in *Minnesota Executive Documents*, 1862, pp. 685, 695; 1863, pp. 20, 21, 29.
[66] *Laws of Minnesota*, 1874, chap. 35, sec. 1.
[67] 26 *Minnesota*, 238.
[68] *Laws of Minnesota*, 1874, p. 312, Joint Resolution no. 32.
[69] *Statutes of Minnesota*, 1878, chap. 32, secs. 4, 5, 6, 11.

lance they could not, in connection with their other duties, have guarded so large a territory.

In 1885 wilful trespass on state lands was declared to be a felony. The punishment was fixed at imprisonment in the state prison for not more than one year or a fine of not more than $1,000, or both.[70] Another act of the same year directed the land commissioner to investigate the extent, character, and value of the timber lands of the state, to protect such lands from trespass and fire, and to employ assistants to carry out this work.[71]

One of the most unsatisfactory features of the Minnesota law was the provision that the involuntary trespasser should be liable for only single damages. This invited careless methods in running boundary lines between private and state timber lands. Millions of feet of state timber were cut without a permit by men who commenced operations on private land and crossed the line to state land. In 1895, after the investigations of the pine land committee had shown that this was a common practice, the legislature provided that any one who cut timber on state land without a permit should pay double damages.[72] Wilful trespassers were required, as before, to pay treble damages. In State v. Shevlin-Carpenter Lumber Company[73] it was argued that the section imposing double damages upon involuntary trespassers was in conflict with the provisions of the state and federal constitutions which declare that no person shall be deprived of property without due process of law. But the court held that public policy justified the legislature in requiring the individual to determine at his peril the boundaries of the land from which he takes standing pine.

The same act provided that whenever timber cut by a voluntary trespasser is mixed with other timber the state may seize and sell all.[74]

The governor was authorized to appoint a special agent who, among other things, was to ascertain whether trespass was being committed on state land.[75] The provision of the act of 1885 requiring surveyors general to report each case of trespass to the land commissioner was continued in force. As it was clear from the report of the pine land committee that this duty had often been slighted, failure to report was made a misdemeanor. The land commissioner was required to investigate the cases reported and, if found true, to cause the trespass to be scaled and appraised and the fact to be reported to the attorney general for prosecution.[76] He might, however, if he deemed it for the best interests of the state, settle a case out of court, but no settlement could be made for less than double the value of the timber as shown by scale and appraisal.[77] A large number of trespass

[70] *Laws of Minnesota*, 1885, chap. 265, sec. 1.
[71] *Ibid.*, chap. 269, secs. 1, 2, 3.
[72] *Ibid.*, 1895, chap. 163, sec. 7.
[73] 99 *Minnesota*, 158.
[74] *Laws of Minnesota*, 1895, chap. 163, sec. 7.
[75] *Ibid.*, sec. 19.
[76] *Ibid.*, secs. 27, 28.
[77] *Ibid.*, sec. 38.

cases have been settled in this way.[78] In 1905, at the request of Auditor Iverson,[79] the settlement of such cases was entrusted to the timber board and power to appoint one or more special agents to investigate trespass cases was vested in that body.[80]

At the present time information in regard to trespass on state lands is derived from five sources: grand juries, county attorneys, surveyors general and their deputies, special agents of the timber board, and state land examiners appointed by the auditor. With an efficient central administration, such a system can be made fairly effective.

But now the state has a ranger service. The state forester, assisted by his rangers and scores of patrolmen, is far better equipped to detect trespass on state timber land than the land commissioner. He is certainly authorized to take action under the law as it stands, for he is directed to protect "in all feasible ways" the timber lands of the state from the illegal cutting of timber.[81] But as the same duty is entrusted to the land commissioner the state forester has not deemed it advisable to encroach.[82]

Prior to 1895 the enforcement of the law against trespass was very lax. There is evidence to show that there were extensive depredations on state timber lands nearly every year. Yet the total collections for trespass from the organization of the state to 1870 were only $8,101.16, less than $700 a year; during the next decade, only $599.70, less than $60 a year; and during the next fifteen years, only $55,285.02, less than $4,000 a year. The startling disclosures made by the pine land committee resulted in many prosecutions and greatly increased collections. In 1895, $29,663.96 were collected; in 1900, $54,299.51; and during the ten-year period from 1895 to 1904, $230,493.94.[83]

But the stealing of state timber was not stopped. In the two-year period ending July 31, 1900, trespass was reported on three hundred thirty-two sections.[84] It was not till about a decade ago, when the state officials began to enforce the law in all its severity, including the criminal provisions, that the depredations were checked.[85]

The total collections for trespass on state lands up to July 31, 1912, were $457,443.41, which is about one sixteenth of the total receipts from timber sales.[86]

September 1, 1894, a forest fire that had been smouldering for several days in the timber land of Pine County, Minnesota, was fanned by a rising wind to what proved the most destructive forest fire in the history of the

[78] *Auditor's Report*, 1895-1896, p. 52; 1905-1906, p. i.
[79] *Ibid.*, 1903-1904, p. 34.
[80] *Laws of Minnesota*, 1905, ch. 204, sec. 14.
[81] *Ibid.*, 1911, ch. 125, sec. 5.
[82] *Second Annual Report, State Forester*, 21.
[83] *Auditor's Report*, 1911-1912, p. 62.
[84] *Ibid.*, 1899-1900, p. 18.
[85] *Ibid.*, 1905-1906, p. i.
[86] *Ibid.*, 1911-1912, p. 62.

state. The village of Hinckley lay directly in its path and was almost entirely destroyed. The death roll numbered four hundred eighteen.[87]

Up to this time next to nothing had been done by the state government to prevent or control forest fires. An act of 1885 had, indeed, made it the duty of the land commissioner to take such steps as would protect the state land from loss by fire; but as no appropriation was made for carrying the law into effect nothing could be done.[88]

Every year destructive fires had raged in the timbered lands of Minnesota, especially in the northern part of the state. In his report for 1884 N. H. Winchell, the state geologist, remarked: "These fires are not occasional but seem to be habitual. No country in the world, claiming to be a civilized and enlightened commonwealth, should permit such wanton destruction of the public domain for one moment when once informed of it, and it would not be possible were it not for the sparseness of the inhabitants and the indifference to the public interests too often exhibited by republican Legislatures."[89] It took such a sacrifice of human life as resulted from the Hinckley fire to arouse the state.

To the state of New York belongs the credit for having first devised a system of forest protection. In 1884 that state created a commission of distinguished citizens, at the head of which was Professor Charles S. Sargent, of Harvard University, to make investigations and report a plan for a system of forest preservation. An appropriation of $6,000 was placed at the disposal of this body. After a careful investigation this commission reported a bill the leading feature of which was to make certain local officers fire wardens. Thus, at small expense to the central government, it became possible to have men in every locality whose duty it was to prevent forest and prairie fires. The New York legislature passed the bill. In 1891 Maine passed a similar measure and New Hampshire followed in 1893.[90]

When the Minnesota legislature met in 1895 public opinion demanded that something should be done to give protection to the people living in the timbered areas of the state. In attempting to solve this problem the legislature copied the leading feature of the New York law.[91] Instead of creating a forest commissioner, however, to carry the law into execution, it made the state auditor forest commissioner and directed him to appoint a deputy to represent him in the execution of the law, to be known as the chief fire warden.

Supervisors of towns, mayors of cities, and presidents of village councils were constituted fire wardens. For those sections of the state where the local government had not been organized the chief fire warden was

87 *First Annual Report of the Chief Fire Warden*, 3.
88 *Laws of Minnesota*, 1885, chap. 1, sec. 1.
89 *Tenth Annual Report, State Geologist*, 1882, p. 8.
90 *First Annual Report, Chief Fire Warden*, 1895, p. 3.
91 *Ibid.*

authorized to appoint fire wardens and, in case the local fire wardens of any community were insufficient in number to control the fires during dry seasons, he might also appoint temporary fire wardens to assist them.[92]

Fire wardens were required to post warning placards containing an abstract of the penalties of the act, to use their personal influence in the community to prevent the setting of fires, and in case of fire to go to the place of danger and control it. They might call to their assistance any able-bodied man over eighteen years of age. They were required to coöperate with fire wardens in adjoining districts and, in the absence of such wardens, to take charge of the work of extinguishing the fires there themselves. They were directed to arrest without warrant any person found violating the provisions of the act, and to take him at once before a magistrate for trial. Finally, they were required to make reports to the chief fire warden concerning the condition of their district in regard to fires.[93]

Such a large proportion of the fires were set by sparks from locomotives that railroad companies were required to comply with special regulations. Each company was required to use efficient spark arresters on its engines. This was very important, for although actual test has proved that even the best of such devices will not absolutely prevent the escape of sparks of sufficient size to start fires when the engine is driven to the limit of its capacity, the danger can be very much diminished by the use of such devices.[94]

Every company had to keep its right of way to the width of fifty feet on each side of the track clear of all combustible materials except railroad ties. Fire, live coals, or hot ashes were not to be left in the vicinity of lands liable to be overrun by fire. It was made the duty of trainmen discovering fires along the right of way to report this fact at the next telegraph station. Warning placards were to be posted in all depots located near forest or grass lands.

The chief fire warden was required to investigate the extent of the forests of the state, the amounts and varieties of timber growing on them, the damages done by forest fires, the causes of such fires, and the methods used to promote the regrowth of timber. This is the information included in the chief fire warden's annual report.[95]

The forest commissioner was given no additional compensation. The salary of the chief fire warden was fixed at $1,200 a year. Each fire warden was to receive two dollars for each day of actual service and the employees called in emergencies, one dollar and a half. The total amount to be expended was, however, carefully limited. No fire warden was to be paid for more than fifteen days of actual service, and no employee for more

[92] *Laws of Minnesota*, 1895, chap. 196, sec. 1.
[93] *Ibid.*, secs. 4-7.
[94] *Ibid.*, sec. 12.
[95] *Ibid.*, secs. 3, 12.

than five. The accounts of these men had to be approved by the board of town supervisors and county commissioners before being paid. No county could expend more than $500 in any one year. Two thirds of the expense incurred by each county was to be borne by the county and one third by the state.[96]

The penalties imposed by the act can not be stated in more concise form than as stated in the warning placards. One of these is quoted in full.

"Forest Fires.

Beware
of setting
Forest and Prairie Fires.

Office of State Forest Commissioner.
St. Paul, Minn. Mar. 26, 1896.

"Under the Act of the Legislature of Minnesota for the preservation of forests and for the prevention and suppression of forest and prairie fires, approved April 18, 1895.

"The following are liable to a penalty not exceeding $100 or imprisonment not exceeding three months:

"Any person refusing without cause, to assist fire wardens in extinguishing forest or prairie fires.

"Any fire warden who neglects to perform his duties.

"Any person who wilfully, negligently, or carelessly sets on fire or causes to be set on fire any woods, prairies, or other combustible material, thereby causing injury to another.

"Any person who shall kindle a fire on or dangerously near to forests or prairie land and leave it unquenched, or who shall be a party thereto.

"Any person who shall use other than incombustible fire wads for firearms or carry a naked torch, firebrand, or other exposed light in or dangerously near to forest land.

"Any person who shall wilfully or heedlessly deface, destroy, or remove this or any other warning placard posted under the requirements of the above-mentioned Act.

"Any railroad company wilfully neglecting to provide efficient spark arresters on its engines or to keep its right of way to the width of 100 feet cleared of combustible material; or which shall fail to comply with other provisions of section 12 of the above-mentioned Act.

"The following are liable to a penalty of not less than $5 nor more than $50.

"Any railroad employe who wilfully violates the provisions of Section 12 of the above-mentioned Act.

"Any owner of threshing or other portable steam engine who neglects

[96] *Ibid.*, secs. 2, 8.

to have efficient spark arresters or who shall deposit live coals or hot ashes without extinguishing the same.

"The following are liable to a penalty not exceeding $500 or imprisonment in the state prison not over ten years or both.

"Any person who maliciously sets or causes to be set on fire any woods, prairie, or other combustible material whereby the property of another is destroyed and life is sacrificed."[97]

C. C. Andrews was appointed chief fire warden. He directed each board of supervisors in towns containing forests or large areas of grass-land to divide their town into three fire warden districts, following streams or other natural boundaries, where possible, and to assign one of their number to each district. Having thus divided their districts they were required to report the boundaries of each, and the name of the person to whom it had been assigned. In this way the chief fire warden was placed in touch with his subordinates and knew exactly where to place the responsibility for any fire that might occur. Eighteen thousand warning placards were printed and sent to the fire wardens and railroad companies to be posted.

The act was amended in 1903. Each fire warden was required to patrol his district in dry seasons, or, if authorized to do so by the chief fire warden, to employ one or more patrols.[98] The state was required to reimburse the counties for two thirds instead of one third of their outlay.[99] Under the former act each board of county commissioners had been required to audit the account of fire wardens in their county. In a few cases these officers refused to act and thus prevented the payment of just claims. This tended to demoralize the service.[100] It was therefore provided that if an account was not audited within ninety days from the time of the second meeting after it was presented, it should be deemed to be rejected. The claimant might then appeal either to the district court or to the chief fire warden. Each helper might now be paid for ten days' service in place of five.[101]

In 1905 the law was changed in one particular so as to bring the local fire wardens under the more immediate control of the chief fire warden. Instead of securing their pay through the county officials the fire wardens and their helpers are now paid out of the state treasury upon vouchers approved by the chief fire warden. One half of the amount expended in this way is reimbursed by the counties.[102]

The next important change in the law came as a direct result of the disastrous forest fires of the summer of 1908. The chief fire warden had pointed out that the existing appropriations, $5,000 for the state's share

[97] *First Annual Report, Chief Fire Warden*, 1895.
[98] *Laws of Minnesota*, 1903, chap. 263, sec. 6.
[99] *Ibid.*, sec. 7.
[100] *Third Annual Report, Chief Fire Warden*, 1897, p. 15; *Fifth Annual Report, Chief Fire Warden*, 1899, p. 140.
[101] *Laws of Minnesota*, 1903, chap. 263, sec. 7.
[102] *Ibid.*, 1905, chap. 82, sec. 8.

of the expenses in an ordinary season and an additional $5,000 for a dangerously dry season, were inadequate.[103] But his appeal was disregarded. It was not till the forest fires of 1908 had destroyed timber to a value of half a million and wiped out the village of Chisholm that the legislature could see the necessity for a larger appropriation.[104] The appropriation for a dangerous season was increased to $14,000; $2,000 was set apart to cover the cost of prosecutions for violations of the law[105] and $12,600 to meet an existing deficiency.[106]

The increased appropriation made possible an improvement in the system of patrolling. The chief fire warden, now known as the forest commissioner, was directed to divide exposed forest areas into districts and to employ a ranger for each, preference to be given to cruisers, woodsmen, game wardens, and forestry students.[107]

The Chisholm fire was the cause of another change in the law. It is believed that the village might have been saved but for the slashings left by lumber companies.[108] The next legislature required all parties cutting timber for commercial purposes to pile the slashings and to burn them before the first of the following May. Persons clearing land for field or pastures were also required to pile the slashings before burning them and prohibited from burning slashings in a dry season.[109]

Some of these requirements were too arbitrary. In certain cases timber could not be removed until the season after it was cut. In such cases it was virtually impossible to burn the slashings. In other cases it was very difficult to complete the burning before the first of May.

The act also contained the following provision: "In dry seasons every such company [railroad company] shall employ at least one patrolman for each mile of its road through lands liable to be overrun by fire to discover and extinguish fires occurring near the line of the road, by which is meant a distance within which a fire could usually be set by sparks from a passing locomotive."[110] The requirement was unreasonable and the railroad companies did not comply. In State v. Crookston Lumber Company the district court held the provision unconstitutional because of "uncertainty and indefiniteness." As the state can not appeal in a criminal case the opinion of the supreme court was not secured.[111]

The amount asked of the 1909 legislature for forest protection was $38,000. Only $21,000 was appropriated. The parsimony of the legislature was again responsible for a catastrophe. There was less rainfall in Min-

[103] *Tenth Annual Report, Chief Fire Warden*, 1904, p. 5.
[104] *Fourteenth Annual Report, Forest Commissioner*, 1908, p. 20.
[105] *Laws of Minnesota*, 1909, chap. 182, sec. 1, (sec. 1784).
[106] *Ibid.*, chap. 128, sec. 1.
[107] *Ibid.*, chap. 182, sec. 1, (sec. 1782a).
[108] *Fourteenth Annual Report, Forest Commissioner*, 1908, pp. 6-7.
[109] *Laws of Minnesota*, 1909, chap. 182, sec. 1.
[110] *Ibid.*, 1909, chap. 182, sec. 1, (sec. 2037).
[111] *Sixteenth Annual Report, Forest Commissioner*, 26.

nesota in 1910 than in any year of which there is a record. Consequently the danger from forest fires was unusually great. Twenty-six rangers were put on duty in June, but owing to the exhaustion of the available funds, it became necessary to discontinue the service after September 1.[112] October 7 four fires that had been burning in swamps of Beltrami County, three of them set by sparks from locomotives and one by settlers, were swept by a gale to the villages of Baudette and Spooner. Twenty-nine people lost their lives and property worth more than a million was destroyed.[113] In addition to this disaster the forest fire losses for the year aggregated $1,721,-752.[114] When the legislature met in 1911 public opinion demanded a permanent ranger service.

A bill drawn by the forestry board was introduced and passed. As this measure reorganizes the entire system of forest protection and places Minnesota among the first of the states of the Union in the matter of fire protection it deserves to be analyzed in some detail. At the head of the forest service is the state forestry board, which consists of the director of the forestry school, the dean of the College of Agriculture, and seven other members appointed by the governor for a term of four years, two of the latter from persons recommended by the regents of the University, the state horticultural society, and the state game and fish commission.[115] This board appoints a state forester at a salary of not over $4,000 a year and traveling expenses.

The state forester is required to become familiar with the location and area of all state timber and cut-over lands, to protect them from fire and the illegal cutting of timber, to prepare maps of the forest reserves and of each of the timbered counties, showing the state lands, and to distribute them to the district rangers. He has general charge of the protection from fire of all the forest land in the state. He is required to investigate the origin of fires, prosecute persons who violate the law, distribute warning notices, coöperate with the state highway commission and the supervising officers of towns and villages in the construction of firebreaks along section lines and public highways, and to advance education in forestry by publications and lectures.[116] With the approval of the forestry board he divides all the lands in the state upon which there is danger of forest and brush fires into patrol districts and appoints a ranger for each district.[117] The rangers are charged with the duty of preventing and extinguishing forest fires in their districts and of performing such other duties as may be required by the state forester. Rangers may arrest without a warrant any person found violating any provision of the law for the prevention of fire. They are not liable for civil action for

[112] *Ibid.*, 3, 4, 6.
[113] *Ibid.*, 6.
[114] *Ibid.*, 17.
[115] *Laws of Minnesota*, 1911, chap. 125, sec. 1.
[116] *Ibid.*, secs. 4, 7, 8.
[117] *Ibid.*, sec. 10.

trespass committed in the discharge of their duties.[118] They may at any time, with the approval of the state forester, employ suitable persons known as fire patrolmen to patrol such territory as may be assigned to them. The state forester and district rangers and, if they are absent, the fire patrolmen, may summon any man over the age of eighteen years to assist in putting out fires. A person summoned who refuses to act is guilty of a misdemeanor, punishable by a fine of not less than $10 nor more than $25.[119]

The act of 1911 embodies the precautionary measures which experience had proved to be necessary. Whenever there is danger that forest fires will be started from locomotives the state forester is directed to require the railroad company to provide patrolmen to follow each train through the exposed district to extinguish fires. In case of failure to do so the state forester, at the expense of the railroad company, may employ men to patrol the right of way. In addition railroad companies are required to provide patrolmen on their own initiative whenever such action is necessary to prevent the setting of fires from locomotives. The railroad company and its officers are liable to a fine of not less than $50 nor more than $100 for the violation of these requirements and the company for the injury caused.[120]

Every railroad company must provide efficient spark arresters, keep its right of way clear of combustible materials, except ties and materials necessary for the operation of the road, from April 15 to December 1, and mass the force necessary to extinguish fires occurring on the right of way. Every engineer, conductor, or trainman discovering a fire adjacent to the track is required to report the fact to the agent at the next telegraph station, whose duty it is, as representative of the company, to take steps to put it out.

Whenever there is danger of fire starting or spreading from slashings left after the cutting of timber the state forester is required to notify the party by whom the timber was cut to dispose of the slashings as he may direct. In case of failure to comply the forester may go upon the premises and burn the slashings. The expense is a lien upon the land and a valid claim against the party who cut the timber. Parties clearing land for roads and rights of way and for agricultural purposes are subject to similar requirements.[121]

The following are guilty of a misdemeanor and liable to a fine of not less than $25 nor more than $100 or imprisonment in a county jail for not less than ten nor more than ninety days: every employee of the state forestry board and every person lawfully commanded to assist who refuses to perform his duty; every person who kindles a fire near forest, brush, or prairie land and fails to extinguish it or sets fire to brush, grass, or stubble and fails to put it out before it has endangered the property of another; every person

[118] *Ibid.*, sec. 11.
[119] *Ibid.*, sec. 12.
[120] *Ibid.*, sec. 13.
[121] *Ibid.*, secs. 16, 17.

who uses any but incombustible wads for firearms or carries a naked torch in or near forest land or who, in the vicinity of such land, throws into combustible material any burning substance and fails to extinguish it immediately; and every person who defaces or destroys a notice posted under the provisions of this act.[122]

Villages and cities located in timber land are directed to create at least two firebreaks not less than ten feet in width completely encircling the townsite.[123] Towns, villages, and cities may levy a five-mill tax to be used in preventing and extinguishing fires.[124]

The state forester may appoint constables, supervisors, and clerks of towns, mayors of cities, and presidents of village councils fire wardens for their districts. In forest patrol districts town and village officers are required to act under the general direction of the state forestry officers.[125]

The appropriation for carrying the act into execution was $15,000 for the fiscal year ending July 31, 1911, $75,000 for the fiscal year ending July 31, 1912, and the same amount for the following year. In addition there was $10,000 available for each year from a federal appropriation for coöperation with state governments that were taking effective steps to protect their timber lands.

In 1911 the state was divided into twenty districts and one ranger appointed for each.[126] The next year the number of rangers was reduced to fifteen. Under their direction there were one hundred twenty-five patrolmen, fifty paid by the federal government and assigned to the districts on the headwaters of navigable streams, forty-three paid by the state, and thirty-two by organized towns.[127] Within the two national forest reserves federal rangers protect the state's timber.[128]

Every applicant for appointment as ranger or patrolman is given a personal examination by the state forester or his assistant. Appointment depends upon woods training and executive ability.[129] The rangers are employed throughout the year, but most of the patrolmen are retained only as long as there is danger of forest fires.

Nearly every railroad company has shown a commendable willingness to comply with the requirements of the 1911 law in regard to patrolling its right of way.[130] In 1912 one hundred seventy patrolmen were employed for this purpose.[131]

The requirements of the new law in regard to the burning of slashings proved to be somewhat more difficult to enforce. It was necessary to show

[122] *Ibid.*, sec. 18.
[123] *Ibid.*, sec. 19.
[124] *Ibid.*, sec. 24.
[125] *Ibid.*
[126] *Second Annual Report, State Forester*, 1912, p. 17.
[127] *Ibid.*, 20-21.
[128] *First Annual Report, State Forester*, 1911, p. 20.
[129] *Ibid.*, 15.
[130] *Ibid.*, 21.
[131] *Second Annual Report, State Forester*, 1912, p. 22.

the people and especially the large corporations that they could not evade the vigilance of the forest service men.[182] But one season's experience with the new administration was sufficient to make them accept the requirement as a part of the logging business.[183]

The injuries caused by forest fires in the two years during which the new forest service has been in operation have been very small, $18,615 in 1911 and $22,644.91 in 1912. But the adequacy of the protection has not been tested by long-continued dry weather. In the opinion of the state forester the present field force must be doubled before a reasonable degree of safety can be reached.[184]

Up to the present time it has not been possible to determine the cause of much more than half of the forest fires. The available data, however, are sufficient to show that the use of fire in clearing land, railroad locomotives, and camp-fires are responsible for most forest fires.[185]

The aggregate annual injuries resulting from forest fires since 1895 is as follows:

Year	No. of acres burned over	Amount of loss
1895[136]	8,265	$ 3,125.00
1896[137]	14,912	16,059.00
1897[138]	66,020	22,455.00
1898[139]	21,580	9,063.00
1899[140]	3,635	1,541.00
1900[141]	179,521	153,399.00
1901[142]	58,395	42,140.00
1902[143]	18,285	3,820.00
1903[144]	15,585	28,292.00
1904[145]	21,920	21,670.00
1905[146]	102,968	58,680.00
1906[147]	11,561	15,115.00
1907[148]	10,385	16,145.00
1908[149]	405,748	2,003,633.00
1909[150]	45,690	61,170.00
1910[151]	1,051,333	1,721,752.00
1911[152]		18,615.00
1912[153]	17,676	22,644.91

[182] *First Annual Report, State Forester*, 1911, p. 23.
[183] *Second Annual Report, State Forester*, 1912, p. 27.
[184] *Ibid.*, p. 47.
[185] *Second Annual Report, Chief Fire Warden*, 1896, p. 17; *Third Annual Report, Chief Fire Warden*, 1897, p. 5, etc.
[136] *First Annual Report, Chief Fire Warden*, 1895, p. 67.
[137] *Ibid.*, 1896, p. 17.
[138] *Ibid.*, 1897, p. 5.
[139] *Ibid.*, 1898, p. 12.
[140] *Ibid.*, 1899, p. 9.
[141] *Ibid.*, 1900, p. 10.
[142] *Ibid.*, 1901, p. 8.
[143] *Ibid.*, 1902, p. 15.
[144] *Ibid.*, 1903, p. 11.
[145] *Ibid.*, 1904, p. 8.
[146] *Ibid.*, Forestry Commissioner, 1905, p. 9.
[147] *Ibid.*, 1906, p. 6.
[148] *Ibid.*, 1907, p. 9.
[149] *Ibid.*, 1908, p. 20.
[150] *Ibid.*, 1909, p. 8.
[151] *Ibid.*, 1910, p. 37.
[152] *First Annual Report, State Forester*, 1911, p. 19.
[153] *Second Annual Report, State Forester*, 1912, p. 27.

CHAPTER IV

THE CHIPPEWA HALF-BREED SCRIP

No account of the timber lands in Minnesota would be adequate without a discussion of the scrip issues authorized by Congress or by the interior department, and particularly the Chippewa half-breed scrip.[1] Scrip is a certificate issued by the United States land commissioner authorizing the holder to select a certain number of acres from any part of the public lands of the United States or from the public lands within a certain district and to receive a patent therefor. The practice of issuing scrip dates back to 1806, when Congress gave authority to issue indemnity scrip in satisfaction of private land claims. Since that time there have been hundreds of scrip issues, most of them authorized for the benefit of individuals in satisfaction of private claims.

September 30, 1854, a treaty was concluded at La Pointe, Wisconsin, between United States commissioners and the Chippewa Indians of Lake Superior and the Mississippi, one clause of which provided: "Each head of a family or single person over twenty-one years of age at the present time of the mixed bloods, belonging to the Chippewas of Lake Superior, shall be entitled to eighty acres of land, to be selected by them under the direction of the President, and which shall be secured to them by patent in the usual form."[2] H. C. Gilbert, who was then acting as agent for these Indians, received a communication from a number of the Chippewa half-breeds asking to receive their allotment. This communication was sent to the office of Indian affairs, which instructed him to report the number of persons entitled to claim land under the clause quoted. In response to his request for instructions as to what persons should be included, the commissioner of Indian affairs ruled that the following classes of persons were entitled: "Each head of a family or single person over twenty-one years of age—females over twenty-one being single persons, as well as widows heads of families." He was further instructed to regard all persons as mixed-bloods which could be proved to have a mixture of white and Indian blood. Five months later Agent Gilbert transmitted the list required, together with the following statement: "This list has been prepared with much care, and contains no names but such as in my judgment, are clearly entitled to the benefit of the provision referred to. Some have doubtless not yet reported themselves; but the list cannot be very materially increased." This list contained two hundred seventy-eight names.

By referring to the clause quoted it will be seen that the land allotted to

[1] An excellent account of this subject is found in Brohough's *Pine Lands of Minnesota*, a doctor's thesis written at the University of Minnesota in 1909.
[2] *Statutes at Large*, 10: 220.

the mixed-bloods was to be "secured to them by patent in the usual form." This clause was inserted in the treaty in this form at the suggestion of some of the more intelligent of the half-breeds, who hoped in this way to induce their tribesmen to abandon their roving life and settle permanently on their farms.[3] This language was certainly not ambiguous. But it was far more convenient to issue scrip to the half-breeds than to locate lands for them and it was not long before it occurred to someone that the treaty could be stretched to cover a scrip issue. February 17, 1856, Agent Gilbert, who was then in Washington, in a letter to the Bureau of Indian affairs, suggested that scrip might be issued to the mixed-bloods, and enclosed a form for such certificates. The Indian bureau referred the letter to the interior department, with the suggestion that Gilbert's plan be followed. The next day the matter was referred to the commissioner of the land office, T. A. Hendricks, for his opinion. He took a very decided stand against the issuing of scrip, pointing out that the treaty plainly contemplated ownership by the Indians and aimed to guard against any transfer of their rights before the issuing of the patent. But Hendricks' sane counsel was not followed. In a communication of March 12, 1856, the Indian bureau again urged that scrip be issued. The secretary of the interior gave his approval and directed Gilbert to issue the scrip.

The question then arose as to who should be regarded as mixed-bloods of Lake Superior as distinguished from mixed-bloods of the Mississippi and of Michigan. The interior department left the matter to be decided by the Bureau of Indian affairs, which ruled that only such mixed-bloods should be included as resided "among or contiguous" to "the various bands of Lake Superior Chippewa." Under this interpretation of the treaty Agent Gilbert found three hundred twelve mixed-bloods entitled to scrip.[4]

The scrip issued at this time was in the following form:

"Office Michigan Indian Agency,
Detroit, ————, 1856.

"I do hereby certify that (A. B.), of Lapointe, Wisconsin, is one of the persons described in the above provisions contained in the treaty of September 30, 1854, with the Chippewas of Lake Superior, and that —— is entitled to eighty acres of land, as therein provided.

"It is expressly declared that any sale, transfer, mortgage, assignment, or pledge of this certificate, or of any rights accruing under it, will not be recognized as valid by the United States; and that the patent for lands located by virtue thereof shall be issued directly to the above-named reservee, or his heirs, and shall in nowise inure to the benefit of any other person or persons.

Indian Agent."[5]

[3] "Report of Neal Commission," *House Executive Documents*, 42 Congress, 2 session, 10, no. 193, 2, 3, 53, C. S., 1513.
[4] *Ibid.*, 3-4.
[5] *Ibid.*, 33.

In 1857 H. M. Rice sought to have the department change its interpretation of the treaty in favor of three mixed-blood Chippewas who did not live with or contiguous to the Lake Superior Chippewas, but the department ruled against him. Six years later Rice requested a reëxamination of the case. This time a new Indian commissioner, Dole, and a new secretary of the interior, J. P. Usher, decided that scrip should be issued to mixed-bloods belonging to the Chippewas of Lake Superior, regardless of residence. This opened the door to a new issue of scrip, which continued till 1865, when Secretary James Harlan decided that the treaty of 1854 did not contemplate the issuing of scrip, but of patents to the land to which the claimants might be entitled. During this period five hundred sixty-four pieces of scrip were issued. Nominally this ended the issue of scrip. Practically it did not, for in 1868 there was substituted for the scrip a so-called certificate of identity, which declared the person named therein to be entitled to select eighty acres of land from any land ceded to the United States by the treaty. The certificate stated that it was not assignable and that no sale or mortgage thereof was permitted.[6]

The scrip issues under the Chippewa treaty of 1854 fall into three well-defined periods: First, the issue through Agent Gilbert, commencing in 1856, when only such mixed-bloods were considered entitled as lived among or contiguous to the Lake Superior Chippewas; second, the issue in 1864 and 1865, under the new ruling of Indian Commissioner Dole and Secretary of the Interior Usher, when the treaty was held to include all Lake Superior half-breeds even if they lived hundreds of miles from the Superior bands; third, the issue of identification certificates under Secretary Harlan's ruling that the treaty called for the issuing of patents and not of scrip.

Having now traced the general course of the rulings of the interior department we turn our attention to the methods employed by the scrip brokers to circumvent the government and steal the land from its wards.

The first period, from 1856 to 1864, appears to be free from frauds. The ruling of the interior department and Indian bureau at this time on the question as to who belonged to the Chippewas of Lake Superior clearly conformed to the wording of the treaty. Five distinct bodies of Chippewas were recognized at the time of the treaty: the Chippewas of Lake Superior, the Chippewas of the Mississippi, the Chippewas of the Pillager Band, and the Chippewas of the Red Lake and Pembina bands. Moreover, the treaty indicated what bands should be regarded as members of the Superior Chippewas. Added to this is the circumstance that treaties of February 22, 1855, and October 2, 1863, made provision for the half-breeds of the four tribes last-mentioned. For seven years little effort was made to secure scrip for other mixed-bloods, and the mixed-bloods themselves were satisfied that the treaty

[6] *Ibid.*, 5-9.

had been fulfilled. The ruling of Indian Commissioner Dole and Secretary of the Interior Usher in 1863 changed the situation completely. The Chippewas of Lake Superior were now held to include Chippewa half-breeds anywhere, on the ground that all Chippewas are related. "Each head of a family" was made to mean both husband and wife of the same family.

Almost simultaneously at Lake Superior and St. Paul the work of obtaining new applicants for scrip assumed the proportions of a regular business.[7] Indian Agent Webb had in his employ three men, two of them mixed-bloods: James Chapman, clerk, Joseph Gurnoe, interpreter, and one T. J. L. Tyler, nominally employed as a farmer on the reservation. Tyler was a reckless and dissipated man and well suited for Webb's purposes. The machine was completed by securing the election of Tyler as justice of the peace of the township of Bayfield, Wisconsin, so that he could certify to the truth of the applications made out by his accomplices. The various bands of Superior and Michigan Chippewas were visited by Chapman and Gurnoe. They called upon the mixed-bloods whom they found sojourning or resident among various bands and obtained their consent to the use of their names in applications for scrip. The names of some mixed-bloods were taken without permission and the names of full-blood Indians appeared on their list. Nor did the fact that an applicant had been dead for many years offer an insurmountable obstacle to members of the scrip ring. There are at least two cases of this kind on record. Bela J. Chapman was a soldier who was killed at the battle of Gettysburg, July 4, 1863. Yet his application was made out in the regular form in 1864. Chapman and Gurnoe were identifying witnesses and certified that Bela J. Chapman appeared before them on the date of the application and subscribed under oath to the facts set forth therein.

The following affidavit presents the facts in the case of the second post-mortem application:

"State of Wisconsin,

County of Douglas—ss:

"D. George Morrison, being first duly sworn, deposes and says that he was acquainted with Michael Morringer, who, in the year 1862, lived at Fond du Lac, Saint Louis County, Minnesota; that I had been acquainted with him for about eight years prior to that time; that in the spring or summer of 1862, said Morringer was drowned in the Saint Louis River. Said Michael Morringer was a mixed-blood, belonging to the Chippewas of Lake Superior, and was forty-five or fifty years of age at the time of his death, and was entitled to scrip under the treaty of September 30, 1854, with the Chippewas of Lake Superior. Deponent further states that he is a mixed-blood, belonging to the Chippewas of Lake Superior, and that he has never been acquainted with or heard of any other person of the name of Michael

[7] "Report of Neal Commission," *House Executive Documents*, 42 Congress, 2 session, 10, no. 193, 58, C. S., 1513.

Morringer, and believes that the application shown him, bearing the name of Michael Morringer, of Fond du Lac, and witnessed by Joseph Gurnoe and John W. Bell, and executed February 4, 1865, before L. E. Webb, Indian agent, relates to the aforesaid Michael Morringer, who was drowned in the year 1862.

D. George Morrison.

"Sworn to and subscribed before me this 28th day of July, 1871, at Superior City, Wisconsin.

S. N. Clark,
United States Indian Agent."[8]

Another Lake Superior half-breed, Vincent Roy, made affidavit to the same effect. S. N. Clark, a member of the Neal commission, certified that he was well acquainted with D. George Morrison and Vincent Roy and that he knew them to be reliable men.

The name of Osh-ke-mur-na appears on the list of applications prepared by Agent Webb. John Buffalo, an educated chief of the Red Cliff band of Lake Superior Chippewas, in his testimony before the Neal commission, made the following statement concerning his application:

"John Buffalo, being first duly sworn, says that Osh-ke-mur-na, known in English as Peter Young, is well known to this affiant as a full-blooded Indian, without any admixture of white blood; that when General Luther E. Webb was Indian agent at Bayfield, he called Peter in his office, and induced him to sign an application for scrip under the La Pointe treaty of September 30, 1854. That said Peter did not pretend to be of white or black admixture, but of pure Chippewa blood. That said Webb paid him $1.25 for his application; that said Peter has not received any scrip or any further consideration for the same. This affiant was present in Webb's office when said application was signed and said money was paid.

John Buffalo.

"Sworn to and subscribed before me, etc.

S. N. Clark,
United States Indian Agent."[9]

Five pieces of scrip were issued to Andrew, Francis, John, Augustus, and Margaret Chenquay, all full-blood Indians, by the commissioner of Indian affairs, Dole, upon the personal application of Agent Webb, without the filing of applications. The affidavit of Augustus Chenquay in regard to the matter gives a striking picture of Webb's mode of procedure in securing applications.

"State of Wisconsin,
County of Bayfield—ss:

"Augustus Chenquay, being first duly sworn, says that he is a pure-blood

[8] *Ibid.*, 56.
[9] *Ibid.*

Indian, without any admixture of white blood; that some four years ago Joseph Gurnoe called him into the office of General L. E. Webb, Indian Agent, and taking me to one side, and wanted me to sign paper in reference to half-breed scrip, saying I was entitled to it, and offered to pay me $20.00 if I would do so. I refused; went home and asked Mr. Moulferrand, the school-teacher, if it would be right. He told me it would not. After that I told Gurnoe not to bother me any more about it. I never signed any paper in reference to this scrip. In the same conversation Gurnoe told me that Francis Chenquay, John B'te Chenquay, Adam Chenquay, and Madeline Chenquay, my father, brothers and sisters, were all entitled to this scrip. I advised them all to have nothing to do with Gurnoe concerning it. There are no other persons of the name of Chenquay connected, related, or belonging to the Chippewas of Lake Superior or Mississippi.

his
Augustus + Chenquay.
mark

"Sworn to and subscribed before me this the 22nd day of July, 1891, at Bayfield, Wisconsin.

S. N. Clark,
United States Indian Agent."

Augustus Chenquay's statement was supported by the affidavits of Vincent Roy and Henry Blatchford, two of the most reliable of the Lake Superior half-breeds.[10]

Chapman and Gurnoe did not witness all the applications. Innocent third parties sometimes assisted. Thus, in February, 1865, Webb and Gurnoe were together in Washington. Webb had with him a large roll of applications which lacked the signatures of witnesses to make them complete. Gurnoe could witness these applications, but Chapman was at his home in Wisconsin. Webb then approached Peter Roy, an intelligent half-breed, well acquainted with the half-breeds of the Lake Superior district. Roy consented to look over the applications and witness for such as he might know. But upon examining the names he found there was not one person for whom he could vouch as entitled to scrip. Webb then appealed to John W. Bell, a respected citizen of La Pointe, Wisconsin, offering him an interest in the scrip if he would sign as a witness. This he declined, but he nevertheless signed twenty-two applications under the belief that he knew the parties and that they were entitled to receive scrip. As a last resort Webb in some cases seems to have forged the names of witnesses, unless we misunderstand the Neal Commission when they say: "Two of the applications purporting to have been executed bear Chapman's name as an identifying witness. A comparison of these signatures with those that are genuine shows an attempted imitation only. He himself declares he did not sign them. Gurnoe says he

[10] *Ibid.*, 57-58.

did not. Who then did? It is not necessary for us to express an opinion."[11]

Out of the list of names secured by Chapman and Gurnoe over two hundred applications were prepared under Agent Webb's directions upon blanks furnished by him. Chapman and Gurnoe signed as identifying witnesses, purporting to swear that they knew the applicants and that they were beneficiaries under the provisions of the treaty. T. J. L. Tyler then signed the jurat, as justice of the peace, while Agent Webb, although fully cognizant of the manner in which the applications had been prepared, certified that the witnesses were men worthy of credit. In several of the applications there was no pretense of complying with the provisions of the treaty, there being no averment concerning the status of the applicant. The most cursory examination by the officers at Washington would have revealed this defect.

The scrip issued was all untransferable. This difficulty was of course foreseen and was ingeniously avoided. Powers of attorney from each applicant, authorizing the receiving and disposing of the scrip, were executed in blank by Chapman and Gurnoe, in like manner as the applications.[12]

In this way over two hundred applications were made out. Of these one hundred ninety-nine were accepted, the scrip being issued to Webb in every case. This he disposed of at the rate of $2.50 per acre and one half of whatever might be realized above that sum. His expenses perhaps amounted to twenty-five dollars for each piece of scrip. He paid the expenses of Gurnoe and Chapman. The only additional compensation received by Gurnoe was the raising of a $250 mortgage on his dwelling house. How much Chapman received is not known, but it was probably not much more. It is safe to say that Webb realized $200 on each piece of scrip issued to him, or a total of about $40,000.[13]

At about the same time that Webb commenced operations in northeastern Minnesota and Wisconsin other parties commenced a similar movement at St. Paul. Most active among these were Isaac Van Etten, N. W. Kittson, and Franklin Steele. Most of the applications were secured from mixed-bloods of the Chippewas of the Mississippi and Pillager bands, and by such members of the Pembina and Red Lake bands as were residing near St. Paul.

Isaac Van Etten made an agreement with a large number of the applicants to procure scrip for them for the sum of $20 or to pay them a certain sum in case he retained it. Most of the applicants who sold received $40, but the prices ranged from $20 to $100, according to the intelligence of the party with whom he was dealing. His method of doing business can be shown most clearly by quoting a few of the statements made before the Neal commission by parties who applied through Van Etten. Mathilda Thompson testified: "I was a married woman September 30, 1854; I made application

[11] *Ibid.*, 57.
[12] *Ibid.*
[13] *Ibid.*, 58.

for scrip under the treaty of September 30, 1854, made at La Pointe, Wisconsin, through Isaac Van Etten; I never saw the scrip, but was told by Van Etten that the scrip was worthless; that it could only be laid on some land around Lake Superior on which I would have to pay taxes, and thereby induced me to sell it to him for $20."[14] Peter Brunnell testified as follows: "I applied for scrip under the treaty of September 30, 1854, through Isaac Van Etten. When I went to him to apply, he said it would be for forty acres. I was on a furlough from the army—I was a soldier in the union army. He then asked me if I wanted to sell; I said, yes; what is it worth? He said he would risk $20, but did not know whether he could get the scrip. He paid me $10 and I gave Peter Smith an order for the other $10, to be paid when the scrip came. This order was paid, and is all I ever received."[15] Elizabeth Monchaud made the following statement: "I applied through Isaac Van Etten, about seven years ago, and have never received either land, scrip, or money, nor do I know that any scrip was ever issued. Van Etten told me to sign the paper, but did not explain it to me."

In the spring of 1865 N. W. Kittson, of St. Paul, discovered a new field, the Red River country, largely inhabited by Chippewa mixed-bloods of the Pembina bands. This was the first time that anyone had been bold enough to assert that this band, separated by the entire width of the state from the Superior Chippewas and never having had any tribal relations with them, could be included under the treaty provision for the Lake Superior mixed-bloods. H. S. Donaldson and an interpreter were sent out to do the work. They made a careful search for half-breeds of either sex without regard to whether or not they were the heads of families and often without regard to age. Not finding enough in Minnesota they went down the Red River to Winnipeg and other places in the British possessions. Donaldson administered the oaths himself, although, of course, a notary only for Minnesota. To prevent the discovery of this fraud he filled the blanks so as to indicate that the oaths had been administered in the county of Pembina, Minnesota.

Donaldson secured four hundred fifteen applications for N. W. Kittson. On these Indian Commissioner Dole issued one hundred five pieces of scrip.[16]

The powers of attorney were not forgotten. The parties operating at St. Paul caused the applicant to execute two powers. The one authorized the scrip to be received from the Indian bureau at Washington and the other the sale, location, and disposal of the same, and the conveyance of the land located. In referring to this matter, the Neal commission remarks: "We are well satisfied that the mixed-bloods signing these powers of attorney, which was generally done by touching the pen once, even if there were a dozen papers to sign, as a general thing never had the slightest conception

[14] *Ibid.*
[15] *Ibid.*
[16] *Ibid.*, 59, 110-124.

of the nature and consequences of the act; and that no explanation was made to them which for a moment would lead them to suppose they were doing anything that would prevent them from obtaining the possession of their scrip. These powers of attorney were executed in blank, and could not, therefore, by any process of legal reasoning, be held to be of any binding force and validity; on the contrary, such instruments have always been held to be without validity, and void."[17]

The arrangement made with the applicants was nearly the same as that made by Van Etten. They were either to pay $50 for procuring the scrip or were to permit Kittson to retain it upon paying $50. But this arrangement was not complied with. No half-breeds were permitted to secure the scrip; nor were they paid in full according to the agreement. In regard to this matter the Neal commission has this to say: "We are informed that Messrs. Wells and Kittson have employed one Robinson, acting United States vice-consul at Winnipeg, in the British possessions, to make settlement with the half-breeds. They give this man Robinson fifty dollars, for which he is requested to obtain a warranty deed from these mixed-bloods for the lands located by their scrip. He obtains this deed, of the nature of which they have but a dim conception, for the smallest possible consideration, and appropriates the balance of the funds to his own purposes."[18]

The question naturally arises, how could so many scrip applications not only defective in fact but on their very face, and in at least four cases made out in duplicate, pass through the hands of government officials unchallenged? The answer is that the officials were dishonest or grossly negligent. Each application had to have the certification of some Indian agent to the effect that he knew the witnesses and that they were entitled to belief. At an earlier point in this chapter reference was made to Indian Agent Webb of the Superior district and to his methods. The certificates issued at St. Paul were certified to by Agent J. B. Bassett. He seems to have had no hesitancy in certifying to the credibility of witnesses whom he had never seen.[19]

But there was still the Indian commissioner at Washington, William P. Dole. He had the last word in the transaction. But the investigations of the Neal commission show that he was not above transactions which served to enrich himself at the expense of his wards. A considerable portion of the scrip was given to Dole as a consideration for issuing it and where an agent or attorney refused to share the scrip with him he declined to issue scrip upon such attorney's applications. Thus Oscar Taylor, of St. Cloud, sent to the Indian bureau the application of five persons. Not hearing from the Indian bureau within a reasonable time he wrote for information. He then received a letter from a clerk of the bureau advising him that if he would permit two of the five pieces of scrip to be retained scrip would be issued and

[17] *Ibid.*, 59.
[18] *Ibid.*, 63.
[19] *Ibid.*, 58.

three pieces forwarded to him. Taylor refused, and no scrip was issued.[20] Of the four pieces of scrip issued in duplicate one was traced to the hands of Dole. Dole even had the audacity to bring suit against a party by the name of Joseph P. Wilson on a contract for the sale of twenty-eight pieces of scrip. The suit was brought in the district court of the second district of Minnesota in Ramsey County. Dole's complaint is in part as follows: "The plaintiff in the above-entitled action, respectfully complaining, shows and alleges that heretofore, to-wit, on or about the 8th day of April, A. D. 1867, by and between William P. Dole, of the first part, and J. P. Wilson, of the second part, witnesseth that the said party of the first part does hereby sell, and at the execution of these presents does deliver to the party of the second, twenty-eight pieces of Chippewa land-scrip, of eighty acres each, being two thousand two hundred and forty acres, at the rate of $3 per acre, in consideration of which sale and delivery the said party of the second part does hereby agree to pay for said scrip the sum of $6,720.[21]

J. P. Wilson.
W. P. Dole."

Wilson set up in defense "no consideration" on the ground that the scrip was not transferable.

No scrip was issued from 1865 to 1868. In 1868 three hundred ten applications remaining in the hands of N. W. Kittson and his associates were sent to Franklin Steele, a resident of Georgetown in the District of Columbia. He laid them before Commissioner Taylor of the Indian bureau and secured scrip on all, though they were defective in form and not one of the applicants had a legal claim to receive scrip. The scrip thus issued went into the hands of three men, Franklin Steele, N. W. Kittson, and Henry F. Wells.

The last scrip issue was made December 17, 1868, when Franklin Steele received one hundred ninety-six certificates. Further issues were only prevented by an order of the new secretary of the interior, J. D. Cox, bearing date August 11, 1869, to the effect that the persons entitled to land under the treaty should be required to make their selection in person.[22]

Although no more scrip could be issued the frauds continued. The place of operation now shifted to St. Cloud, where the land office nearest to the Chippewa country was located. The ruling of the interior department now being that the applicants must make their selections in person, the operators altered their methods accordingly. Nearly all the persons who made applications at St. Cloud came to that place with the long procession of carts which each year wound their way to St. Paul and other points, coming from northwestern Minnesota and Canada laden with furs for market. When these half-breeds camped on the prairie near St. Cloud they were taken in

[20] *Ibid.*, 59, 62.
[21] *Ibid.*, 60.
[22] Secretary of Interior to Commissioner of General Land Office, *House Executive Documents*, 42 Congress, 2 session, 10, no. 193, 47, C. S., 1513.

crowds to the land office. They subscribed and swore to applications, were identified, located their eighty acres, and immediately conveyed the land to the friends who had been kind enough to call their attention to this unexpected gift from the government. In return they received from $15 to $40.[23] Of one hundred sixteen applicants who secured land at the St. Cloud office the Neal commission was able to find but one who in 1854 belonged to the Chippewas of Lake Superior, and he had already received scrip.[24]

This condition continued till 1870, when J. D. Cox, secretary of the interior, caused R. F. Crowell of St. Paul to be appointed special agent to determine just what persons were entitled to land under the treaty. After working through the year 1870 Crowell submitted a preliminary report in which he failed to call attention to a single case of fraud. It is probable that if he had been allowed to continue alone he would have whitewashed all the corruption which has been described. But C. Delano, who became secretary of the interior in 1871, considered the work so important that he appointed three other men to assist Crowell, Henry S. Neal, of Ohio, Selden N. Clarke, agent for the Chippewas of Lake Superior, and Edward P. Smith, agent for the Chippewas of the Mississippi. Two of these men, Neal and Crowell, proceeded to Fort Abercrombie, on the Red River, and from thence down that river to Pembina, from Pembina to Saint Joseph, thirty miles up the Pembina River; thence back, and to White Earth, and across to Leech Lake, where they were joined by E. P. Smith; thence to Crow Wing, St. Cloud, and St. Paul. From St. Paul they proceeded to Bayfield, Wisconsin, with S. N. Clarke, who was special commissioner in the matters under investigation relating to the Lake Superior Chippewas. At the various points mentioned, investigations were made and testimony taken. So far as possible the applicants were seen personally. As a result of this investigation, which appears to have been very carefully made, the commission secured testimony concerning nearly every person to whom scrip had been issued.[25]

In their final report this commission made recommendations as follows: "That such legislation by Congress be secured as will hereafter forbid the receiving of any applications for scrip under the treaty of September 30, 1854, at any land office, until the merits of such application shall have been decided, and the bounty granted by special act of Congress in each case.

"That immmediate action be taken on the entries at the Saint Cloud land-office, and the Duluth land-office, and that said entries be cancelled, not one of them having been found entitled.

"That in any treaties hereafter to be made with any tribe of Indians by which lands may be ceded, no promise of scrip shall be made a part of the consideration by the Government, the provisions under the 'homestead law'

[23] "Report of Neal Commission," *House Executive Documents*, 42 Congress, 2 session, 10, no. 193, 64, C. S., 1513.
[24] *Ibid.*
[25] *Ibid.*, 53.

being regarded sufficient to provide for all who desire to settle on the land, and all of the half-breed scrip clearly proving that such Government bounty inevitably leads to fraud and corruption, and brings no help to the half-breed.

"That immediate steps be taken to secure the Government against loss, by cancelling all entries made at the different land-offices on applications for scrip found illegal, for which the patent has not yet been issued.

"As to what course should be pursued, if any, to secure the punishment of parties to the frauds which your commission has declared, we do not feel called upon to express an opinion, further than to suggest that the interest of all true government, both of its honor and justice in coming time, seems to require that such flagrant wrongs as perjury, and subornation of perjury, and forgery and embezzlement should not be permitted to escape the mark of condemnation and punishment, and especially do we hold it important that an officer of the Government, made a guardian of the nation's wards, should not be permitted to enjoy with impunity the fruits gained by such crimes, at the expense of his wards."[26]

Only three of the four members of the commission signed the report. R. F. Crowell submitted a minority report in which he stated as grounds for dissent the following reasons:

"First. Because the report reflected upon the decisions and practice of the Bureau and Department which appointed the commission.

"Secondly. Because statements which were not made under oath nor to the commission, but to some member of it, were reported as evidence submitted to the commission.

"Thirdly. Because sufficient time was not allowed the undersigned to consider and weigh the information, statements, and evidence, submitted to and obtained by the commission or members thereof.

"Fourthly. Because the report, together with the evidence and papers submitted therewith, were not in the form required by instructions, and were not in substance as required by instructions.

"Fifthly. Because the undersigned is not convinced of the correctness of the statements and conclusions contained in said report."[27] This minority report, read in connection with the preliminary report by the same man, in which, after months of investigation, he called attention to no case of fraud, is its own sufficient comment.

In discussing the scrip issues in a report to the interior department after the Neal commission had made the investigation, Indian Commissioner Walker suggested that all the so-called scrip issued under the treaty of 1854 should be regarded, not as scrip, but merely as certificates of identity, inas-

[26] *Ibid.*, 65.
[27] Indian Commissioner Walker to Secretary of Interior, *House Executive Documents*, 42 Congress, 2 session, 10, no. 193, 15, C. S., 1513.

much as the treaty did not call for the issuing of scrip. As such the certificates issued would not conclude the department and it would be free to disregard them and to grant patents only to those entitled.[28]

Following the conclusions of the Neal commission, Walker suggested that patents be issued to the persons who received the Gilbert scrip, twenty-one others, whom the commission had found to be entitled, and twenty-four more, whose claims it submitted without recommendations. What action the interior department would have taken in the matter it is impossible to say, for the blundering interference of Congress took the matter out of its control.[29]

The startling disclosures of the Neal commission for a while threatened to end the scrip business. It was not alone the scrip brokers who were affected. A large share of the scrip had been bought by leading lumbermen of the state and located on the pine lands of Cass and Itasca counties, recognized as being among the best in the state. But Senator Windom, of Minnesota, was himself a holder of Chippewa scrip and at his bidding Congress passed a little innocent-looking bill, cloaked in an empty title, which revived the scrip business and saved the coveted pine lands to the lumber kings.

The bill was introduced by Senator Windom April 23, 1872, and referred to the committee on public lands, of which Windom was a member. As spokesman of the committee in reporting the bill back to the Senate Windom urges that it be passed immediately "on account of the great injury that is being done by delay." It came up by unanimous consent on June 7th and was passed without a word of opposition. The bill reached the House the same day and was passed at once, the rules having been suspended so as to permit immediate action.[30] This act bears the enlightening title: "An act to perfect certain land titles therein described." It provides as follows: "That the Secretary of the Interior be, and he is hereby, authorized to permit the purchase, with cash or military bounty-land warrants, of such lands as may have been located with claims arising under the seventh clause of the second article of the treaty of September thirtieth, eighteen hundred and fifty-four, at such price per acre as the Secretary of the Interior shall deem equitable and proper, but not at a less price than one dollar and twenty-five cents per acre, and that owners and holders of such claims in good faith be also permitted to complete their entries, and to perfect their titles under such claims, upon compliance with the terms above mentioned: Provided, that it shall be shown to the satisfaction of the Secretary of the Interior that said claims are held by innocent parties in good faith, and that the locations made under such claims have been made in good faith and by innocent holders of the same." It is evident that this act does not on its face reveal its true purpose. To one not thoroughly acquainted with the situation it

[28] *Ibid.*
[29] *Ibid.*, 16.
[30] *Congressional Record*, 42 Congress, 2 session, 2525, 4106, 4319, 4333, 4335, 4475.

might seem no more than fair that persons who had innocently acquired and located claims under an obscure section of an Indian treaty should be permitted to acquire good title to such claims by actually paying the government for them.[31] The matter takes on an entirely different aspect to one who knows that the big lumbermen of Minnesota, the chief beneficiaries, had acquired these claims in the first place by purchasing scrip which bore on the face of each piece the statement: "It is expressly declared that any sale, transfer, mortgage, assignment, or pledge of this certificate, or of any rights accruing under it, will not be recognized as valid by the United States; and that the patent for lands located by virtue thereof shall be issued directly to the above-named reservee, or his heirs, and shall in no wise inure to the benefit of any other person or persons." How these men could be considered innocent holders in the strict sense of the word it is difficult to see. But if the measure should not be held to be an absolute nullity this interpretation must be given to it. Moreover, the provision for payment did not adequately protect the interests of the government, as will be pointed out in another connection.

This act imposed upon the interior department a new problem. Claims arising under scrip issued to men who had not the shadow of a right to receive it now became as good as those derived from the Gilbert scrip, provided it happened to have come into the hands of a so-called innocent holder.

In order to carry out the provisions of this act it became necessary to send out another commission. The secretary appointed T. C. Jones, of Ohio, E. P. Smith, Indian agent in Minnesota, and Dana E. King to do the work.[32] This commission was instructed to do two things: First, to hear the testimony of parties claiming the right to purchase land under the act of 1872; second, to appraise the land located by persons who should be found to have a valid claim.[33]

The commission proceeded to Minneapolis, where they took the testimony of parties who desired to avail themselves of the benefits of the treaty. The determining questions were whether the parties seeking relief had taken a hand in the frauds practiced in issuing scrip or had acquired their interest in it with knowledge of the fraud under which it was issued.

The claims investigated were of two kinds: first, locations made under certificates purchased of half-breeds or their assignees; second, the claims of those whose locations were based upon personal applications at the land offices at St. Cloud and Duluth.[34] The latter as well as the former were certainly made with the express intention of securing title to pine lands, for powers of attorney were made out in each case, and these were left blank as

[31] *Statutes at Large*, 17: 340.
[32] "Report of Jones Commission," *Senate Executive Documents*, 43 Congress, 1 session, 1, no. 33, 9, C. S., 1580.
[33] *Ibid.*, 5.
[34] *Ibid.*, 10.

to the name of the person to whom the land was to be conveyed, so that the first holder could fill it out in favor of the "innocent" purchaser of his claim. That the locations were made by the purchaser and not by the half-breed is also very clear, for the land selected was Cass County pine land, of which the Red River Chippewas knew nothing.[35]

The testimony of all claimants was taken under oath, and they were submitted to very close cross-questioning in regard to the manner in which they secured their claims. It is impossible to present an adequate idea of the character of these transactions without quoting from this testimony. T. B. Walker, of Minneapolis, testified in part as follows: "I am interested with Dr. Butler in pieces of located Chippewa half-breed scrip and in pieces which I claim in my own right. This scrip was purchased by us in the years 1868, 1869, 1870, and 1871; I think the most of it in 1868. We purchased some of Henry T. Wells, some of William S. Chapman, some of R. I. Mendenhall, some of Thompson & Brother, St. Paul. We purchased this scrip just as we would go into the market and purchase land warrants. The price paid for this scrip was principally $4.00 to $4.50 per acre. This was about the market value of the scrip and I don't think we purchased any at a less price than $4.00 per acre."

Question: "What inquiry, if any, did you make as to the character of this scrip before you purchased it?" Answer: "The questions we asked were: Are the parties alive, and are they known to the parties selling the scrip, and find out from them what they know about the parties, and whether they would be likely to deed the land to us after the scrip should be located. We made no question as to the legality of the scrip, because we supposed that had been settled beforehand by the Government."

Question: "When did you first hear of any fraud in these certificates or over-issue of the same?" Answer: "I first heard of it during the session of the commission in the summer of 1871."

Question: "Did you ever refer to the treaty under which these certificates of identity were issued to determine their validity?" Answer: "Don't remember that I ever did."

Question: "What was your belief at the time of making these purchases in regard to the character of these certificates whether they were issued in good faith, or were fraudulent?" Answer: "I had no reason for supposing them to be fraudulent, and believed them to be genuine, and the parties named in certificates entitled to make the entries of the land."[36]

Levi Butler testified to about the same facts as T. B. Walker. The following replies will give the general tenor of his testimony. Question: "Who principally had these certificates for sale at the time of these purchases?" Answer: "My opinion is that H. T. Wells has had more than any

[35] *Ibid.*, 13.
[36] *Ibid.*, 25-26.

other one man, but they have been for sale by several different parties."

Question: "Have you ever heard any reports that were unfavorable to the character of the certificates held by Mr. Wells?" Answer: "Never, until lately—never heard anything up to the time of making purchases."

Question: "Did it ever occur to you before you completed your purchases that the amount of these certificates issued might be too large?" Answer: "I had no reason definitely to suspect so."[37]

Dorillus Morrison, who, next to T. B. Walker, had been the largest purchaser of scrip, showed a remarkable lack of memory concerning nearly every phase of these transactions, as the following replies will indicate.

Question: "Do you remember what inquiry you made in regard to its character before making any purchase?" Answer: "I do not."

Question: "If you have any impression or recollection on the subject you will save time by telling just what that recollection is." Answer: "I have no particular recollection in regard to it."

Question: "Whether your recollection is particular or general, we shall be obliged to you for giving us what it is." Answer: "I have neither general nor particular recollection in regard to it; I bought it as an article of merchandise."

Question: "Did you ever have any conversation in reference to the character of these certificates with Senator Rice?" Answer: "I have no recollection at this moment that I have. It is very possible that I may have had; no specific recollection. You may add, I have at this moment, no recollection."[38]

The testimony given by Henry T. Wells served to explain the attitude taken by the purchasers of scrip in regard to the questionable powers of attorney with which each piece was accompanied.

Question: "You say you saw on the face of the certificates that they were issued by the United States. Did you not also see that they were not assignable, and the patent could only be issued to the person named in the certificate, or his heirs?" Answer: "I did."

Question: "How did you expect to make them available to you?" Answer: "Each certificate was accompanied with a power of attorney to locate, and a power to sell after location. By virtue of these powers I expected or intended that I, or the person who might buy them of me, should locate the scrip and then perfect title to the land."

Question: "Did you suppose that a power of attorney, executed under seal and the name of the person constituted as attorney left blank, that any one could fill such a blank except the one who signed the power of attorney?" Answer: "I did, under certain circumstances; that is to say, if the person who signed the power authorized the person to whom he delivered it, to fill

[37] *Ibid.*, 28.
[38] *Ibid.*, 34-35.

in the name of the attorney, I supposed such authority was given (and so informed), expressly or implied by all the scripees who executed these powers of attorney."[39]

It is clear from the testimony of the claimants that far the greater part of the scrip was kept for sale by less than a dozen men, among whom were the following, H. T. Wells, Horace Thompson, W. S. Chapman, J. R. Wilson, Indian Commissioner Dole, N. W. Kittson, and Isaac Van Etten. Most of these men had been instrumental in securing the issuing of the scrip and were acquainted with its fraudulent character. But these parties seem to have guarded their secret well, as the almost total ignorance of the lumbermen of the fraudulent character of the scrip would seem to show. It must be remarked, however, that the memory of some of the lumbermen was remarkably bad when the questions were directed to ascertain what they knew about the scrip at the time when they bought it.

After completing their investigation the Jones commission found the following parties entitled to relief under the act of June 8, 1872.

	No. of entries	Acres
Henry T. Wells	35	2,800.00
T. B. Walker and Levi Butler	68	5,440.00
T. B. Walker	20	1,600.00
Dorillus Morrison	46	3,674.88
Dorillus Morrison, Davison (surveyor general), King, Windom, and others	41	3,358.20
Lake Superior and Puget Sound Land Company	18	1,440.00
Farnham, Lovejoy, and Gilfillan	13	1,080.00
Eastman, Bovey and Company	8	640.00
Farnham and Lovejoy	4	320.00
S. A. Harris	3	240.00
Aukney, Petit and Robinson	3	240.00
Gen. B. W. Wright, Windom, and Davison	2	160.00
W. W. Hale	1	80.00
Total	262	21,073.08[40]

At the time when this report was made the claims of a few parties who resided in distant states had not been adjusted. The claims accepted as valid by the commission amounted to 22,233.08 acres.[41] This includes more than four fifths of all the claims presented.

But the commission was appointed not alone to determine which claimants were entitled to purchase the land they had located but also the value of these lands. In order to secure this information they took the testimony of leading lumbermen, claimants, and others. T. B. Walker estimated the market value of his locations at six dollars per acre. William P. Aukney,

[39] *Ibid.*, 39-40.
[40] *Ibid.*, 16-17.
[41] Indian Commissioner Smith to Secretary of Interior, *Senate Executive Documents*, 43 Congress, 1 session, 1, no. 33, 2, C. S., 1580.

who claimed 240 acres before the commission, said it was worth from eight to ten dollars per acre. Jonathan Chase, an experienced lumberman, put the lands of Levi Butler and T. B. Walker at ten dollars per acre. Not one of the parties interested appraised the value of his location at less than five dollars per acre. But lands of the same character had not been bringing more than from one dollar and a quarter to two dollars and a half at the government sales. This, however, was because of a combination of bidders to keep prices down. And yet it seemed to the commission that it would be "equitable and proper" for the government to charge no more than it had been realizing at the public sales.[42] In conformity with their recommendations the secretary of the interior fixed the price for 7,251 acres at one dollar and a quarter per acre and for the balance at two dollars and a half.[43]

The lumbermen thus secured undisputed title to the land in controversy upon paying to the government one fourth of the amount which it was worth, according to their own testimony.

[42] "Report of Jones Commission," *Senate Executive Documents*, 43 Congress, 1 session, 1, no. 33, 15-16, C. S., 1580.

[43] Land Commissioner Drummond to Secretary of Interior, *Senate Executive Documents*, 43 Congress, 1 session, 1, no. 33, 6, C. S., 1580.

CHAPTER V

FRAUDS IN THE ADMINISTRATION OF THE TIMBER LANDS OF MINNESOTA

From the story of the administration of the federal timber lands in Minnesota, with its tale of fraud and wholesale perjury, of favoritism toward private interests, of incompetency of public officials, and gross abuse of public trust, we turn to the account of the stewardship of the state timber lands with the hope of finding a cleaner record. The administrative officials of the state, to be sure, have been handicapped by imperfect laws, as the preceding chapters indicate. But the state legislature has done its work better in this regard than the federal Congress, and the administrative officials of Minnesota have therefore worked under less unfavorable conditions than the United States land commissioner. Moreover, they have been closer to the scene of action and have had more servants in the field to guard the forest heritage. It is therefore the more keenly disappointing to find that up to a little more than a decade ago, the standard of efficiency and integrity in the management of the state timber lands has been uniformly low, and that there have been periods when the state land office has been shamefully corrupt.

The available data for the first two decades is very scant. But if we may judge from the facts brought to light by the investigation of a later period it is probable that the records of the auditor's office conceal large losses to the school funds of the state.

But in 1893 the inefficiency and open disregard of legal requirements manifested by the administrative officials aroused the legislature to make an investigation. In the session of that year a joint resolution was accordingly adopted which provided in part as follows: "That three members of the senate, to be appointed by the president thereof, and four members of the house, to be appointed by the speaker thereof, be, and are hereby appointed and created a committee to sit during the recess of the present legislature to inquire into any and all frauds that have been committed at any time in any part of the state by which the public lands owned by the state, known as school lands, university lands, internal improvement lands, and other lands that are known to have been heretofore the property of the State, have been despoiled of their timber by open robbery and undervaluation of their value, or by any other means, or whereby any real or personal property in this State has escaped its just share of taxation." Under this

resolution Ignatius Donnelly, C. F. Staples, S. W. Leavitt, J. F. Jacobson, M. J. McGrath, and A. G. Eaton were appointed to do the work.[1] To the efficient and fearless manner in which these men conducted the investigation it is that we owe a large share of our knowledge as to how the state's land has been administered.

There are four classes of officials to which the state has entrusted the care of its timber lands: First, the estimators and appraisers, whose work it is to go upon the timber lands of the state before they are offered for sale and determine with approximate accuracy the amount of timber on each section, the distance from logging rivers, and the danger of destruction from forest fire; second, the scalers, who by actual measurement determine the amount of timber sold; third, the surveyors general, who supervise the work of the state scalers; and fourth, the state auditor and his corps of assistants in the state capitol, and the other executive officers who have duties in relation to the state timber lands. It will perhaps simplify this discussion if the work of these various classes of officials is considered in turn, in the order indicated.

By section 7 of chapter 102 of the general laws of 1885 the requirements for estimates and appraisals are as follows: "Before any permit shall be granted, the timber shall be estimated and appraised by the land commissioner, which estimate and appraisal shall show the amount and value per thousand feet, of all timber measuring not less than eight inches in diameter twenty-four feet from the ground, and of other timber below this standard, on each tract or lot, with a statement of the situation of the timber, relative to risk from fire, or damage of any kind, and its distance from the nearest lake, stream or railroad."[2] The most cursory reading of this section must serve to show that in order to be able to make a trustworthy report the estimator must go upon the section and examine all parts of it with care. This has not always been done. In fact it is perhaps no over-statement to say that the cases in which the law was fully complied with prior to the time when the pine land committee made its investigation were rare. The following extract from the sworn testimony taken before the committee will show a common mode of procedure.

Question: "What is your name?" Answer: "H. M. Waldrif."

Question: "Have you ever owned the pine or stumpage on section 36-48-19?" Answer: "Yes, sir."

Question: "You may state what took place from the time you first thought of buying the stumpage on this section until you had completed the purchase."

Answer: "Well, I went out and found the section, one corner of it, and I thought I would buy it for our mill, and I wrote to the state auditor asking

[1] *Report of Pine Land Committee*, 2, 84.
[2] *Laws of Minnesota*, 1885, chap. 102, sec. 7.

him to give me the estimate and the price on it, so that I could buy it. About two or three weeks after I had written to the auditor, a man by the name of Spencer, state estimator, came up to Mathowa to our mill and said to me that the state auditor had received a letter from the firm of Waldrif and Densmore, wanting this timber estimated, and asked me if I knew anything about the section. I told him that I knew but very little, as I had only been to one corner of it and saw that there was some pretty fair logs on that corner, the northeast corner. He said to me that he was pretty old and that was a wet country and wanted to know if I couldn't give him an idea of what timber was on it, but I could not give him any idea of what timber was on it as I had never been over the section. Then he said, do you think there is eight hundred thousand, and I said I thought there was about a million, and he said, well, we will put it at seven hundred thousand, and so he estimated at that, and then he asked me what kind of pine it was, and I said it was very nice, and he said he would appraise the value at $2.00 a thousand, and that was the last I ever saw of him. He took the train and returned, as I supposed, to St. Paul, and so far as my knowledge goes, he never went over the section while he was there. I am positive he didn't visit the section, because I saw him get off the train and saw him go on the train returning the same day, and was never seen around there at any time except that day."[3] On such grossly careless estimates and appraisals the timber has been sold from tens of thousands of acres of state land.

Estimating and appraising timber is work which no one but an expert can perform satisfactorily. How much some of these men lacked of coming up to this standard can be seen from the testimony of one Mr. Westby, appointed state estimator by Auditor Bierman in 1891. According to his own testimony this man qualified for the position of state estimator by serving nine years as a sailor, seven years as a policeman, fourteen months running a ferry-boat, three months as sergeant-at-arms of the state senate, three years in surveying United States land, and four years as deputy warden of the state prison. He further testified that all he knew about the business he had picked up while running government lines and that he did not know the value of timber.[4] When questioned as to Mr. Westby's qualifications for the work one of the clerks in the auditor's office replied: "I have sufficient reason for not stating it (my opinion), and I don't think you ought to ask it owing to the position I occupy; I don't think you ought to; I decline to answer that."[5]

Another abuse sprang up in connection with this branch of the service. In many cases the estimators and appraisers, who were supposed to safeguard the interests of the state against the men who purchased stumpage,

[3] *Report of Pine Land Committee*, 41.
[4] *Ibid.*, 51-52.
[5] *Ibid.*, 52.

were paid by the men against whose dishonesty they were seeking to guard.[6] The inconsistency of such a mode of procedure is too apparent for comment.

But the utter inefficiency of these servants of the state is seen most clearly by its results. The following is a sample of the work of the estimators as compared with an actual scale made under the supervision of the committee.

	Amount of timber reported by state estimators as standing on section	Cut reported by Surveyor General	Amount taken from section as shown by scale of committee
	Feet	Feet	Feet
One section	1,200,000	848,180	3,083,890
One section	2,450,000	673,270	7,114,215
One section	300,000	189,050	1,632,820
One section	1,225,000	3,017,352	6,079,160
One section	200,000	1,940,280	3,448,931
One section	275,000	747,520	3,517,450
One section	575,000	962,070	2,463,510
One section	200,000	1,538,550	3,172,400
One section	900,000	1,177,750	8,255,082
	7,325,000	11,094,022	38,767,458

An examination of this table will show that from one section on which the state estimators reported 200,000 feet of pine the committee found that 3,448,931, more than seventeen times as much, had been cut. On another section on which the estimators could see but 200,000 feet the lumbermen were able to find 3,172,400. More lumber was cut from a single section than the estimators found on the nine. And from the nine sections more than five times as much pine was taken as the estimators included in their reports.

With records such as these before them the pine land committee was certainly not too severe when it said: "The researches of the committee into this matter justify them in making the broad statement that as a rule, the men who have been doing the work for the state for the last twenty years, have been either totally and grossly incompetent or dishonest; that the interests of the state would have been just as well subserved if we had had no estimators or appraisers; that their work has tended to deceive rather than enlighten, and to defraud the state rather than to increase the revenues."[8]

The state scalers are persons appointed by the surveyors general to scale the timber cut from lands of the state and of private individuals. They are to be distinguished from estimators and appraisers in that the latter report upon the timber while it is still standing, while the former measure the logs after they have been cut and hauled to the landing. Upon their report the surveyors general in their various districts in turn based theirs. Whether

[6] *Ibid.*, 53.
[7] *Ibid.*, 53.
[8] *Ibid.*, 54.

the state would receive payment for all the timber taken from the state lands thus depended upon the honesty and efficiency of the state scalers. These men should have been appointed by the state and should have been in the sole employ of the state. Instead of this, prior to 1895, the surveyors general frequently appointed an employee of the lumber company to do the work. A striking example is the case of Clovis Maloch, who was appointed scaler by Surveyor General Ash in 1892. At the time of his appointment he was in the employ of the Shevlin-Carpenter Lumber Company. He was appointed at the request of that company and remained in their employ while scaling the state timber which that company had cut, receiving a salary from that company and nothing from the state. The rescale of the committee showed that the Shevlin-Carpenter Company cut 2,872,363 feet in excess of the amount reported by Maloch to the surveyor general.[9]

Another scaler, Frank H. Ring, in the employ of the state in this capacity from 1883 to 1894, reported 357,000 feet cut from one section from which the Itasca Lumber Company took 7,000,000 feet.

These were not isolated cases. According to the pine land committee every scaler examined, through the manner and character of his testimony, conveyed the impression that he understood his duties to be simply to scale the logs brought to the landing and to keep his eyes closed to illegal practices.[10]

The duties of these men were very closely related to the duties of the surveyors general and their shortcomings must in a large measure be charged up against their superiors.

Concerning the duties of the latter the law of 1877 with subsequent amendments provided in part as follows: "The several surveyors of logs and lumber shall make a detailed report . . . . to the commissioner of the State Land Office on or before the first (1st) day of April in each year, ... stating whether such cutting has been according to the terms of the permit, and if not properly cut, the consequent damage to the state; and such timber or logs shall not be sold, transferred or manufactured into lumber until the amount due the State, according to the report of said surveyor, shall have been paid in full; and it shall be the duty of the surveyors of logs and lumber to report to the commissioner all trespass which has been, or which may hereafter be made upon the state pine lands."[11] This statute, while not as complete as desirable, and as later legislation has made it, was perfectly definite. And yet every provision in it was ignored by the surveyors general. The law required a detailed report of the cutting done on state lands. The obvious purpose was to secure a record by which the state could keep track of the cutting on each subdivision. During all the

[9] *Ibid.*, 28-32.
[10] *Ibid.*, 33.
[11] *Laws of Minnesota*, 1877, chap. 36, sec. 14.

time prior to the logging season of 1893-1894 the practice was to report the cutting of several sections in the same report in such a way as to make it impossible to tell how much came from any one section.

In the opinion of the investigating committee this was done "with the evident intent of so mixing things up that it would be impossible to determine whether a theft had been committed or not."[12]

The law required that the logs should not be sold, transferred, or manufactured into lumber until the amount due the state had been paid in full. In many instances the timber was manufactured and sold to the consumer before the state received a dollar. In order to identify the state timber the law required that the letters M.I.N. should be put on every piece of timber cut on state land. Many purchasers paid no attention to the requirement. Others marked some of the logs but not all. The scalers said nothing about this matter and in many cases did not know there was such a requirement. The surveyors general said nothing. These officers showed a deplorable lack of knowledge of their duties under the law. They did not report whether the timber had been cut according to the terms of the permit, what injury the state had suffered when not so cut, or whether trespass had been committed. In fact, as far as the surveyors general were concerned, the state had no protection.[13]

Such conditions could never have existed had the central administration been honest and efficient. But here conditions were the worst. The committee of investigation describes it thus: "It is here we find the most palpable neglect of duty; the least regard for the welfare of the state's interests; the most careless, unsystematic conduct of the business of the state, and the greatest display of either unpardonable ignorance of the duties of this office under the law, or downright official dishonesty. . . . . It is in justice to all concerned that we say that this state of affairs is confined to no particular period in the history of the state auditor's office, but so far as the committee have been able to determine, has been uniform and uninterrupted for many years."[14]

Even the formality of sending out an employee of the state to make an estimate was often omitted. Concerning this matter Matthew Clark, stumpage clerk in the auditor's office for five years, commencing in 1889, said in his testimony: "It is often the case that right at the day of the sale we ask a man if he has ever been on a certain tract of land, and if he has, we ask him how much it will cut, and how much it is worth, and we sell it on that; we sell a good many of the tracts on that kind of estimates."[15]

By the law of March 7, 1885, the governor and treasurer were required to approve estimates and appraisals before the timber could be sold. The

[12] *Report of Pine Land Committee*, 25.
[13] *Ibid.*
[14] *Ibid.*, 34.
[15] *Ibid.*, 4.

law provides: "Before any pine timber is sold from any of the lands of the state the commissioner shall submit the appraisals and estimates of said timber, and statements regarding liabilities to loss or damage to said timber to the governor, treasurer, and commissioner, and if a majority of them shall state that it is for the interest of the state that such timber shall be sold, and such statement shall be indorsed on the estimate of said timber and signed by said officers officially, the commissioner may then advertise and sell the timber on said lands so authorized to be sold, in the manner provided by law; Provided, That no pine timber on any state lands is sold under any conditions unless the officers herein named shall state that such sale is necessary to protect the state from loss."[16] No law could be more plain or more explicit. And yet, prior to January 1, 1891, it was utterly disregarded. And during the years 1891 and 1892 the estimates were not submitted to the governor, Auditor Bierman assigning as a reason that it had come to him by hearsay that Governor Merriam had said that it was a matter he did not know anything about, and had left the matter to be passed upon by the auditor. The apparent approval of the treasurer, Colonel Bobleter, during these two years, does not stand on a much better footing. In many cases it appears that the treasurer signed after the lands had been sold. Not till the administration of Governor Nelson was this law fully complied with.[17]

Perhaps the most flagrant example of fraudulent estimates discovered by the committee was the filling in of blank estimates by some man in the auditor's office. During the fall of 1891 James Sinclair was in the employ of Matthew Clark, the stumpage clerk at the capitol, making estimates for him of the amount of timber on state lands. According to his sworn testimony, he signed a large number of blank estimates for Clark while in his employ. The committee found thirty of these in the files of the auditor's office, properly filled out as required by law. With reference to half of these estimates Sinclair testified that he had examined the section and reported the amount of timber to Clark, and with his original memoranda before him, he stated what amount of timber he reported. As filled out on the blank estimates the amount of timber on each description was greatly reduced. The following table will show the extent of this reduction.[18]

Description all or part of	Sinclair's estimate furnished Clark Feet	As filled in by Clark Feet	Price	Reduction Feet
10-63-15	1,250,000	845,000	$1.50	405,000
36-46-16	1,500,000	460,000	1.50	1,040,000
36-45-16	1,500,000	425,000	1.25	1,075,000
1-56-22	1,200,000	600,000	1.75	600,000
2-56-22	1,600,000	650,000	1.75	950,000
6-56-22	800,000	250,000	1.75	550,000

[16] *Laws of Minnesota*, 1885, chap. 269, sec. 4.
[17] *Report of Pine Land Committee*, 20-25.
[18] *Ibid.*, 43-50.

7-56-22	1,150,000	625,000	1.75	525.000
18-56-22	1,150,000	450,000	1.50	700,000
14-56-23	1,075,000	400,000	1.75	675.000
2-56-23	600,000	150,000	1.75	450,000
12-56-23	400,000	200,000	1.75	200,000
3-56-23	2.400.000	1.500,000	2.00	900,000
5-56-23	2,100,000	1,000,000	2.00	1.100,000
6-56-23	900,000	500,000	2.00	400.000
16-45-17	3,975,000	1,225,000	1.50	2,750,000

This shows an aggregate reduction from Sinclair's estimate of 11,915,000 feet. Regarding the remaining blank estimates which bore his name, Sinclair testified that he had never been on the sections purporting to have been examined by him. In commenting on this remarkable transaction the committee says: "It will be seen that, if Sinclair's testimony is true, Clark, in every instance, not only inserted descriptions of land that Sinclair never reported on, and had never seen, but in addition inserted particulars about the timber and land required by law, such as '50,000 feet at $1.00 thousand,' 'old cutting,' 'small Norway,' 'twelve logs to the thousand,' 'liable to fire,' 'haul two miles,' 'roads fair.' But the 'half has never been told,' and the committee have grave doubts that it will ever be, so monstrous is the iniquity of the whole matter."[19]

It is significant that all the timber covered by these fraudulent estimates was speedily sold.[20]

The next step in the sale of the timber was the giving of the notice of sale. In this connection the law was at fault in not requiring in so many words that the notice should state the description of every piece of land from which timber was to be sold. The form of notice actually used for many years was as follows: "Notice is hereby given that I will offer at public auction, at my office in St. Paul, on the —— day of ————, at —— o'clock, a. m., all pine stumpage on state lands exposed to waste or damage, in accordance with the provision of section 47, chapter 38, General Statutes 1878.

————————————,

Commissioner of Land Office."[21]

The actual sale was conducted with the same disregard of the requirements of the law. One method which resulted in the sale of thousands of acres of timber at prices far below their actual value was to allow certain parties to run up the price of stumpage to a very high figure at the public auction in order to shut out other parties who were honest bidders; of allowing these favored parties to give the bond required by law, take out their permit, allow it to expire by limitation without cutting any timber, and then, at a

[19] *Ibid.*, 48.
[20] *Ibid.*, 49.
[21] *Ibid.*, 4.

subsequent sale, when the honest bidder was not present, to allow the same party to repurchase the same tract at a greatly reduced price. That such a game could be worked successfully seems very remarkable because by the terms of the permit the purchaser expressly contracted that, if he failed to cut the timber as he had agreed, and the state subsequently sold the same timber at a lower figure, he would make good the difference. If the purchaser defaulted the state could sue his bondsmen. But in spite of these safeguards this device for defrauding the state and for shutting out honest competition was used extensively. Yet no action was taken by the state officials to reimburse the school funds by holding the purchasers to their contract.

The following extract from the testimony of Auditor Bierman will show more clearly how the game was played.

Question: "Have you before you, Mr. Bierman, the record of sale of stumpage book No. 2, one of the records of your office?" Answer: "Yes, sir."

Question: "Do you find on page 84 of that book a record of the sale of 36-41-25?" Answer: "Yes, sir."

Question: "Was that section sold as shown by that record to William Sauntry on Sept. 3d, 1890, at $4.40 per thousand?" Answer: "Yes, sir."

Question: "Was any cut ever reported to this office under the permit issued upon that sale?" Answer: "No, sir."

Question: "Did that permit have in it the provisions upon which you have stated that you relied for the carrying out the conditions of the sale, viz.: that if a party fails to cut the timber and the state was required to make another sale, that he should pay the state the difference between the price bid under this permit and the price for which the second sale was made?" Answer: "Yes, sir."

Question: "Was the same piece of land again sold to the same William Sauntry on the 17th day of September, 1892, at $1.50 per thousand?" Answer: "Yes, sir."

Question: "Has any effort ever been made to collect from Mr. Sauntry, or his bondsmen, the difference between $4.40, the price bid by him at the first sale, and $1.50 per thousand, the price of the second sale?" Answer: "No, sir."[22]

Similarly the timber on section 16-48-26 was sold to Knox and De Laittre on September 2, 1890, at two dollars per thousand and resold two years later to the same parties at one dollar per thousand. Scores of other sections were dealt with in the same way.[23]

According to the requirements of the law every purchaser of timber had to secure bondsmen to guarantee that he would live up to the terms of the

[22] *Ibid.*, 6-7.
[23] *Ibid.*, 7-15.

permit. It was for the auditor to see that these were responsible men. Instead, "straw men," mere names, were often accepted. And in cases where renewals of the permit were granted, which, of course, released the original bondsmen, the holders of the permit were not required to secure others. Thus the state was left without security.[24]

Not able to satisfy their greed for timber by evasions of the timber laws the crafty lumber thieves used the mineral lease law as an accessory. Under this law any person could take out a prospecting lease for one year on any section in the mineral area of the state upon payment of $25 and retain prospecting rights by the payment of $100 a year. Often these sections were heavily timbered. Under the law of 1889 the lessee had the right to use all the timber he required in operating his mine. But these men wanted all the timber and they wanted to get it at a nominal price. The committee explains their further procedure as follows: "A, discovering a piece of land valuable for its timber only, takes out a 'prospecting mineral lease' for one year, in the name of B. . . . . After the lapse of the necessary time to allay suspicion, A goes to the state auditor and represents that the timber is in danger of fire, and must be cut to save it. The auditor informs him that it cannot be sold, as B has a mineral lease on it. A then says: 'Well, I will see B and I may be able to obtain his consent that the timber be sold.' After making a pretence of seeing B he returns and informs the auditor that he has 'fixed' B, and if the stumpage is put up for sale subject to B's lease, he will purchase it. An estimator is then sent out to appraise the land, who is also 'fixed' by A, and the stumpage sold. No one but A can bid at the sale, as B will not consent if any other party bids at all, hence A gets it at his own price."[25]

At the time when the pine land committee made its investigation the auditor had no legal authority whatever to sell hardwood stumpage. And yet, during the eighties and early nineties, the hardwood was sold from thousands of acres of school land. It was not only sold without authority, but without estimate or appraisal, and little was done to determine whether an honest report of the cutting was ever made. An arbitrary entry of the amount and value of the timber was made in the log record book in the auditor's office in order to give the sale the appearance of legality. The investigating committee estimated that the school funds of the state have suffered a loss of hundreds of thousands of dollars by these frauds alone.[26] The practice continued until the committee called Auditor Bierman's attention to the fact that there was no legislative authorization for these sales.

So far as the handling of the business connected with pine stumpage was concerned the committee found every department of the state government,

[24] *Ibid.*, 37, 55.
[25] *Ibid.*, 17-18.
[26] *Ibid.*, 15-17.

which was in any way connected with it, guilty of disregard for the law. The law of 1878 provides that after the draft for stumpage has been put into the hands of the state treasurer for collection, "If the party owning such stumpage shall not pay the amount of such draft within ten (10) days after said draft has been placed in the hands of the State Treasurer, it shall be the duty of the said Treasurer to take possession of the logs in question, and sell the same"; or, in lieu thereof, "turn the draft over to the Attorney General, who shall immediately proceed to collect the same."[27] The extent to which this provision has been ignored is indicated by the fact that a report made by the state treasurer in October, 1893, showed uncollected stumpage drafts amounting to $94,930.55, some of which had stood since 1884, 1889, and 1892, but most of which had been placed in his office from April to August, 1893. This $94,000 represented a loan of state money to the lumbermen to carry on their private business, a loan on which interest was rarely collected.[28]

The following tables show the direct financial result of the work of the pine land committee.

Money Actually Recovered at the Time When the Committee Reported[29]

From whom received	Description	Amount reported by company	Amount found to have been cut	Amount collected
Itasca Lumber Co.	16-55-22	673,270	7,114,215	$18,000.00
Itasca Lumber Co.	36-56-26	288,380	785,000	2,000.00
Staples & Mulvey	16-48-19	.....	868,806	3,026.29
T. R. Foley	16-57-23	1,081,260	1,997,320	7,500.00
Total		2,043,410	10,765,341	$30,526.29

Suits Pending	
Itasca Lumber Co., four suits	$ 39,264.88
Shevlin-Carpenter Co., two suits	47,598.08
S. Reynolds, one suit	3,000.00
T. H. Shevlin, one suit	26,281.22
T. G. Webber, one suit	1,140.10
Powers and Dwyer, one suit	40,000.00
Total	$157,284.28

Evidence was gathered for seventeen other suits.

Fifty sections and parts of sections were rescaled under the direction of the committee. From these sections the committee found that 73,173,959 feet had been cut. The surveyors general had reported but 23,324,113, about 31 per cent of the true amount, a loss to the state of 49,849,846 feet. In addition to this the committee caused an estimate to be made of the amount of timber cut from 78 sections and found that about 79,532,018 feet had been cut. The amount reported by the surveyors general was 41,562,585

[27] *Laws of Minnesota*, 1877, chap. 56, sec. 15.
[28] *Report of Pine Land Committee*, 54-55.
[29] *Ibid.*, 78.

feet, which leaves a shortage of 37,969,433. Some of these sections, however, were subsequently scaled and are included in both totals.[80]

But the most important result was the improved timber law of 1895. This law was based largely upon the recommendations of the committee. The land administration, however, was not at once purged of all its abuses. But this investigation marks the beginning of a period of somewhat greater diligence in the enforcement of the law.

[80] *Ibid.*, 79.

CHAPTER VI

SPECIAL PROBLEMS OF THE MINERAL LANDS

By an act of Congress of 1873 Minnesota was expressly excepted from the operation of the mining laws of the United States. All her mineral lands were thus left open to purchase or settlement under the homestead laws, in the same way as agricultural lands, thereby opening the way for speculators to secure valuable mines at a nominal price.[1]

Up to 1889 there was no law on the statute books to prevent the state auditor from following a similar policy with reference to the state lands. But for some years prior to that time no state lands situated in the iron ranges of St. Louis, Lake, and Cook counties were sold.

But the rapid development of private iron mines in the northeastern part of the state, commencing in the early eighties, aroused the legislature to the importance of protecting the minerals on the state lands by appropriate legislation. A law was accordingly passed in 1889 providing for the development of the mines on state lands by means of a leasing system, the state retaining title to the land.

Any person desirous of prospecting for minerals on state lands could secure a mineral lease of a contiguous area not to exceed one hundred sixty acres, by making application to the state auditor and paying twenty-five dollars to the state treasurer. A person holding such a lease had the exclusive right to prospect for iron ore on the lands embraced in his lease for the term of one year.[2]

In case he desired to enter upon mining operations, he could at any time before the expiration of the lease apply for a contract.[3] By the terms of such a contract the lessee agreed that within five years after the completion of a railroad within one mile of the land, he would mine and remove at least 1,000 tons of ore and thereafter 5,000 tons annually. Up to the time when mining operations were to commence, the lessee was required to pay $100 a year. For every ton of ore removed he undertook to pay a royalty of twenty-five cents and in case of failure to remove the minimum amount required he must still pay a sum equal to the royalty on 5,000 tons.

The lessee was required to pay the royalty quarterly and to accompany his payments with an exact statement of the amount of ore mined. This amount was to be determined by requiring the railway companies transporting the ore to weigh it. The state had the privilege of testing the correctness

[1] *Statutes at Large*, 17: 465.
[2] *Laws of Minnesota*, 1889, chap. 22, sec. 2.
[3] *Ibid.*, sec. 3.

of the company's scales at any time. In order to further safeguard the interests of the state it reserved the right to inspect the mines at any time and to determine for itself what quantity of ore had been removed. The lessee was authorized to use the timber found on the land for fuel and for building purposes, but not for smelting.

In order to secure prompt payment it was provided that in case the royalty should remain unpaid for sixty days or in case the lessee should violate other conditions of the contract the state might take possession. The state reserved a lien for unpaid balances on the ore mined and on improvements.

It has been the experience of mine owners that leases of mining properties result in careless methods of mining. In order to prevent waste, the lessee was required to operate the mine in the manner customary in mines operated by their owners and in such a way as not to cause any unusual or unnecessary injury to the mine, or hindrance to its subsequent operation.[4]

All payments by the lessee were to be made to the state treasurer upon the order of the state auditor and were to be credited to the proper permanent fund.[5] All taxes which might be assessed against the land leased, the improvements upon it, or the iron ore removed, were to be paid by the lessee just as if he owned the land.

The contracts were made assignable, the assignee taking the contract subject to the same conditions as the original holder. The period of the contract was fifty years, but it was revocable by the lessee at any time upon giving sixty days' notice to the land commissioner.[6]

The provisions of the act applied only to iron-bearing lands. In case any other valuable mineral should be discovered on land leased, the terms of the lease were to be agreed upon between the auditor and the lessee. Should these fail to agree upon terms, the matter was to be referred to a board of three, made up of two persons chosen by the respective parties and of a third party selected by these.[7] This provision of the law has been applied in only a single instance.

But perhaps the most important provision of the act was the final section, which read as follows: "Whenever state lands situated in the counties of St. Louis, Lake and Cook are sold, for which contracts or patents are issued, it shall be proper for the land commissioner of the state land office to indorse across the face of such contracts or patents the following words: 'All mineral rights reserved to the state.'"[8] It will be observed that this provision was not mandatory. It permitted but did not direct the state auditor to reserve the mineral rights.

[4] *Ibid.*, sec. 4.
[5] *Ibid.*, secs. 4, 5.
[6] *Ibid.*, sec. 4.
[7] *Ibid.*, sec. 7.
[8] *Ibid.*, sec. 9.

One of the most serious defects in this law was the provision for a fixed royalty in connection with an extremely long contract period. No royalty could be fixed in 1889 which would be fair to both parties fifty years later. While twenty-five cents a ton was perhaps a fair royalty in 1889, it is now scarcely a third of the amount received by private mine owners, and it is almost certain that ore values will advance. This means that the state will lose at least fifty cents a ton on the iron ore now under lease. Placing the amount of iron ore on the state lands already under lease at 140,000,000 tons, the estimate of the state tax commission, it follows that the state will be the loser by this arrangement to the extent of $70,000,000. Nor can any change in the law remedy the matter, for the mineral leases are contracts, and they are just as binding upon the state as upon a private individual, under the clause in the Constitution of the United States providing that no state shall pass any law impairing the obligation of contracts.

Another defect in the law was the failure to make the provision for the reservation of minerals mandatory. This has been remedied by subsequent legislation.

A third defect was the failure to make provision for the sale of timber on lands held under mineral leases or contracts. As much of the mineral land was heavily wooded and as the area held under mineral leases and contracts at times amounted to tens of thousands of acres, this omission proved very embarrassing. The amended act of 1895 corrected this omission in the first law by reserving to the state the right to sell all timber upon the lands leased and to the purchaser the right to enter upon the land to remove the timber. The same measure required the state to give twenty days' notice before canceling any lease for failure of the lessee to live up to the terms of the contract.[9]

The legislature of 1897 introduced a few minor changes. The competition for mineral leases had become so keen that the legislature found it necessary to provide that when there should be more than one applicant for the same land the lease should be granted to the party who was willing to pay the most. This provision has resulted in increasing the total income from prospecting permits by several thousand dollars. In 1904 a single permit brought $1,500. The auditor was forbidden to allow the same land to be leased to the same person two years in succession.[10]

The same year an act was passed for the encouragement of the smelting of the iron ore within the state. As no coal deposits of the quality required for smelting purposes had been discovered in Minnesota in 1897, all coal for smelting purposes had to be shipped from other states. At that time the smelting process was so imperfectly developed that it required more than a ton of coal to smelt a ton of iron. It follows that it was cheaper to

[9] *Ibid.*, 1895, chap. 105, sec. 4.
[10] *Ibid.*, 1897, chap. 312, sec. 1.

transport the iron to the coal mines than to carry the coal to the iron mines. Minnesota iron ore was therefore shipped to Buffalo and other eastern lake ports to be manufactured. In order to overcome this advantage of the eastern states and build up the manufacture of iron and steel goods in Minnesota, the legislature of 1897 passed an act granting a rebate of the royalty in case the ore was smelted or manufactured in Minnesota. This applied to prior leases as well as subsequent. The act was to be operative for a period of ten years.

This measure was entirely contrary to the spirit of the act of Congress granting lands to the state for educational purposes, for it sought to devote a considerable portion of the income from those lands to a purpose entirely foreign to the intention of Congress when the grant was made. The measure, however, proved of no effect, for a subsidy of twenty-five cents a ton proved insufficient to transfer the smelting and manufacturing industry to Minnesota; and in 1907 the act expired by its own limitation.[11]

If the measure had remained in force, it would have resulted in the wasting of a large part of the permanent trust funds in an unnecessary subsidy, for after the act expired, the progress of discovery has accomplished what the legislature failed to effect by means of an artificial stimulus. It now requires less than a ton of coal to smelt a ton of ore and manufacture it into steel. And it is therefore cheaper to transport the coal to the iron mine than the iron ore to the coal mine.

The imperfections in the act of 1889 with reference to the reservations of minerals on state lands were corrected by an act passed in 1901. By this law the state reserved all coal, iron, copper, gold, or other valuable mineral found upon state lands received from the federal government. Lands granted by the United States or by the state to aid in the construction of railroads were expressly excepted from the operation of the act.

The minerals so reserved were to be disposed of by the land commissioner in the same manner as minerals upon other state lands. For this purpose the state reserved the right to enter upon the land and remove minerals found upon it. No provision was included, however, allowing the holder of a mineral lease on such land to enter and prospect for minerals.[12] This was added in 1907.[13]

It was made the duty of the land commissioner to see that every instrument conveying title to state land contained a provision reserving all mineral rights. But the failure of that officer to comply with this provision of the law does not constitute a waiver of the reservation.[14]

The law governing mineral leases was again amended in 1903. No important changes were made, however. The purpose of the measure seems

[11] *Ibid*, chap. 315.
[12] *Ibid.*, 1901, chap. 104, secs. 1-4.
[13] *Ibid.*, 1907, chap. 411.
[14] *Ibid.*, 1901, chap. 104, sec. 5.

to have been to explain disputed points in the former law. Applicants who should apply at the auditor's office at the same minute or stand in line at the same time for the purpose of making application for mineral leases were to be considered as having made application at the same time. Applications received in the same mail delivery were to be regarded as having been made simultaneously. In case two or more should apply at the same time for the same land, the auditor was instructed to fix a day when it would be leased to the highest bidder among such applicants.[15]

The mineral lease law of 1889 remained in force for eighteen years. An attempt was made to repeal the act in the session of 1905, when O. T. Ramsland introduced a repeal bill in the house. This bill reached the final vote in the house on April 13, five days before the end of the session, and was passed by a vote of seventy-one to nine. It failed to reach a vote in the senate, because the committee on mines and mining, to which it was referred, failed to report it back to the senate. On April 15, Senator A. V. Rieke moved that the bill be recalled from the committee, that the rules be suspended, and that the bill be placed upon the calendar. On this motion he demanded a roll call.

In order to make the subsequent procedure clear it is necessary to explain at this point that a motion to suspend the rules of the senate requires an affirmative vote of two-thirds of the entire senate. Consequently, if one more than one-third of the sixty-three members of the senate absent themselves from the senate chamber, such a motion cannot pass.

The question being taken on the motion to suspend the rules only thirty-five senators voted, twenty-five voting aye and ten no. Fifty-nine had responded to the morning roll call, the business which, according to the senate journal, immediately preceded this motion. Twenty-four senators must have left the chamber when this matter came up for consideration, for the rules of the senate required all senators who were present to vote. The twenty-four men, quite as much as the men who voted no, were responsible for the failure to repeal the mineral lease law at this session. The state had to wait two years more for the repeal of this law. This delay caused a loss of millions of dollars to the permanent trust funds.

January 23, 1907, Henry Rines introduced into the house a bill for the repeal of the mineral lease law. This measure was passed two days later under a suspension of the rules, with but one dissenting vote. Two weeks later it received a unanimous vote in the senate.[16] Unless a future legislature shall repeat the seventy million dollar mistake of 1889, the repeal of this law may mean tens of millions of dollars to the permanent trust funds.

An interesting problem has arisen in regard to the rights of the state to the minerals in the beds of meandered lakes. Government surveyors

[15] *Ibid.*, 1903, chap. 225.
[16] *Ibid.*, 1907, chap. 14.

received instruction to meander, that is, to survey, measure, and plat all lakes and deep ponds of the area of twenty-five acres and upwards. There are a large number of such lakes in the iron ore region of the state and many of them are close to producing mines. Accordingly it became important to determine who had title to the beds of the lakes. It was claimed on the one hand that the general government in giving patents of land containing meandered lakes had given title only up to the meander line, the border of the lake as platted by the government survey, that the remaining ground was vacant and unclaimed and therefore belonged to the sovereign people of the state. On the other hand, it was asserted that the land, at least to the water line, belonged to the riparian owners, even when the water line did not coincide with the meander line.

The question came up for consideration by the land department in 1903, when applications were presented for prospecting mineral leases of the ground beneath Longyear Lake, a meandered lake in St. Louis County. The leases were issued in the hope that the riparian owners would contest the rights of the lessees, but the former took no steps to bring the matter before the courts.

The same year another party made application for a prospecting lease of the land under the waters of Snowball Lake in Itasca County. In order to set the matter at rest the land commissioner took the opposite course, refusing to issue a lease. The interested party then secured a writ of certiorari from the supreme court, to review the action of the land commissioner. But the state failed to secure a decision upon the vital question, the supreme court holding that the action of the land commissioner was ministerial and in no way judicial or quasi-judicial, and therefore not subject to review by the courts.[17]

Having failed to secure a decision in regard to the matter through the courts, the state auditor urged upon three successive state legislatures the importance of passing an act asserting for the state title to the beds of meandered lakes. Finally the legislature of 1909, urged on to take definite action by the fact that private parties were about to commence mining operations under the beds of certain meandered lakes, passed an act declaring that all ores and other minerals beneath the waters of meandered public lakes and rivers belong to the state, that the state has a right to dispose of the land, ores, and minerals so situated, and that the state's title shall not be affected by the subsequent drying up of such lakes and rivers.

The principal of all funds derived from the sale or other disposition of "such minerals and lands" is to be preserved and invested in the same way as the swamp land fund of the state. The interest accruing from the resulting fund is to be paid into the state road and bridge fund.[18]

[17] State ex. rel. Grant *v.* Iverson, 92 *Minnesota*, 355, 362; *Auditor's Report*, 1903-04, pp. xxxv-xxxvi.

[18] *Laws of Minnesota*, 1909, chap. 49.

The act of 1909 is a mere nullity. If the riparian proprietors owned the land beneath the waters of meandered lakes prior to the passing of the act, they continue to do so. Any attempt to deprive them of that property would clearly be a violation of the clause of the Fourteenth Amendment which declares that no state shall deprive any person of property without due process of law.

The matter is now before the courts. The district court has decided that the state does not have a valid claim but an appeal has been taken to the supreme court.

The legislature of 1909 extended the mineral reservation act of 1901 so as to include land conveyed by the state to railway companies as right of way.[19] In case merchantable ore is discovered and it becomes necessary to remove the railway in order to carry on mining operations, the state can order it to be removed, but must furnish a new right of way.[20]

The conservation movement that was sweeping over the country at this time led to the passing of an act reserving to the state the water-power upon all state lands received or to be received from the United States. This step adds the leasing of water-power rights to the problems that must be solved in the administration of the state lands.

Another matter that will crave the attention of the legislature in a not distant future is the question of providing a new system of mineral leases. When a new measure is introduced it should embody several important changes. A sliding scale should be introduced based upon the iron content of the ore instead of a flat rate like that in the law of 1889. At the present time Minnesota ore which tests less than forty-nine per cent is not considered marketable, but by a judicious system of mixing with high-grade ore it can be disposed of to advantage. Under the old system of leasing there was no incentive for the lessee to mine the low-grade ore. Leases of this kind are now frequently made by private mine owners in the state. Thus a large lease of iron lands by a private owner recently provided for a royalty of 85 cents per ton on iron ore which showed 59 per cent of metallic iron, an increase of four and eight-tenths cents per ton for each unit above 59 per cent, and a decrease of the same amount for each unit below that standard but not lower than 49 per cent.

Careful provision should be made in the lease to secure a fair royalty not merely at the time when the lease is made but at all times during its period of operation. In the private lease referred to above the probable increase in the value of iron ore from year to year is met by providing for a yearly increase in the amount of the royalty of three and four-tenths cents per ton. Under this contract 59 per cent ore will bring $1.19 royalty in 1917.[21]

[19] *Ibid.*, chap. 494, sec. 1 (sec. 2892).
[20] *Ibid.*
[21] *Auditor's Report* 1905-1906, p. liv.

It has also been suggested that the state auditor, attorney general, treasurer, secretary of state, and governor should be allowed to fix the royalty rates at five or ten year intervals. In case a sliding scale applied to increases in royalty from year to year should be adopted the law should be of limited duration, for it is impossible to foretell with any approach to accuracy what the value of iron ore will be in the distant future. It would perhaps be better to leave the matter to executive discretion.

The lessee should be required to furnish drawings showing the exact nature of the mining operations and the location of all ore left unmined, whether marketable at the time or not, so that when the lease expires the state may have for future reference a complete record of all its ore. At some time in the future when ore for which there now is no demand becomes marketable either through the progress of invention or the exhaustion of the supply of high-grade ore such data would mean an enormous saving to the state by obviating the necessity for making an expensive examination of old mines.

Other important changes which have been proposed by the land commissioner are the following: the lessee should submit for the state's approval plans for opening and operating the mine. The maximum acreage for each lease should be reduced from 160 to 80. The minimum annual output should be increased from 5,000 to 20,000 tons.

A problem of great importance in the administration of the state lands has been the inspection of the mines and mining operations. Prospecting for iron ore on state lands commenced immediately upon the passing of the law of 1889, active mining operations in 1893, and heavy shipments of ore the next year.[22] The auditor pointed out the necessity for inspection in 1892, but the legislature pursued a penny-wise policy.[23] In 1895 the legislature made a joint appropriation for the sale of state lands, the prevention of trespass, the estimating of pine timber, and the inspection of iron mines.[24] This method continued till 1905. The amounts provided were insufficient to permit adequate inspection. In 1895 the amount that could be spared for inspection purposes was but $300. In 1898 and 1899 and in 1901 and 1902 not a dollar was used for inspection purposes although a third of a million tons of ore were reported taken from the mines on the state lands. The largest amount used for inspection purposes before 1905 was $715.50 in 1896.[25]

A single case will serve to illustrate the importance of having an inspector in the field when the mining operations are in actual progress, and the impossibility of checking up mistakes by subsequent measurements. In 1893 and 1894, 629,000 tons of ore were taken from a state mine in the

[22] *Ibid.*, 1907-1908, p. 59.
[23] *Ibid.*, 1891-1892, p. 14.
[24] *Laws of Minnesota*, 1895, chap. 378, sec. 1, first.
[25] *Auditor's Report*, 1907-1908, p. 60.

Mesabi Range. As the state had no inspector in the field at that time a civil engineer was employed in 1903 to measure the pit. His final estimate indicated that 375,000 tons of ore which had not been accounted for had been taken from the mine. The state, however, could not prove that the estimate was correct for it did not have data showing the exact elevations when mining operations were commenced.[26]

But in 1905 the legislature recognized the importance of more adequate inspection of the mineral lands and appropriated $13,000 for the next two-year period.[27] The amount of the annual appropriation was increased to $7,500 in 1907[28] and $10,000 in 1909.[29] This has made possible a fairly satisfactory system of inspection. Frank A. Wildes was placed in charge of the work as chief mining inspector in 1905 and has had three assistants during the shipping season.

To secure information and inspect the operations the state's inspector visits the properties very frequently and watches each step of development. When loading ore is begun his visits are more frequent, in most cases at least once a day, and where two mines are operated in one pit, such as the Burt-Pool Mine at Hibbing or the Mesabi Mountain Mine at Virginia, the state has a man on the ground to see that no ore is wasted and to take the numbers of the cars as they are loaded. If rock or low-grade ore is encountered that must be moved and wasted on the dump, he sees that no more is wasted than is necessary.

The inspector learns to know every part of the underground mines. He watches every move carefully to see that the ore is taken out clean, and that the timbering is sufficiently strong to hold up important drifts.[30]

It can not be too strongly emphasized that the best interests of the state require that an adequate inspecting force be kept in the field. The private owners find it wise business policy to do so and they are men of experience. Says Mr. Wildes: "In the early history of the state it practiced penury on a large scale in handling its timber and from that experience it should learn a lesson so that this folly shall not be repeated with ore lands. We are just at the beginning of the mining of ore on state lands, and now is the time to adopt a comprehensive system for caring for the enormous volume of wealth."[31]

The passing of the mineral lease law of 1889 found a large number of mining prospectors eager to avail themselves of its provisions, for ore had already been mined in paying quantities on the Vermilion range, on which some state land was located.

The number of prospecting leases reached the largest total in the two-

[26] *Ibid.*, 1903-1904, pp. xxxviii-xl.
[27] *Laws of Minnesota*, 1905, chap. 337, sec. 6, no. 10.
[28] *Ibid.*, chap. 476, sec. 4, no. 8.
[29] *Ibid.*, chap. 375, sec. 5, no. 9.
[30] Frank A. Wildes, "Policy of the State Regarding Ore Lands," in *Minnesota Academy of Social Sciences*, 2: 187-189.
[31] *Ibid.*, 195.

year period between July 31, 1890, and July 31, 1892, during which 1,354 such leases were issued. This was due to the discovery of ore on the Mesabi Range, where the state owned numerous tracts of land. The number gradually declined till 1897 and 1898, when but 38 leases were issued, owing to the fact that the working mines were easily capable of supplying the demand for ore. From that time until the act of February 13, 1907, cut off further leases there has been a gradual increase in the number of prospecting permits. The number of mineral contracts has naturally followed the same course. July 31, 1908, there were 39,517 acres held under mineral contracts. Five thousand and six prospecting leases and 872 mineral contracts have been issued.

These have been an important source of income to the permanent trust funds. Up to July 31, 1912, $443,665.77 had been derived from this source.[32]

The following table shows the amount of the income from mineral leases and contracts and from royalty from iron ore:

	Mineral leases and contracts	Royalty on iron ore
1890	$ 5,925.00	
1891	9,975.00	
1892	48,800.00	
1893	30,750.00	
1894	22,675.25	$ 66,756.27
1895	15,225.00	121,850.60
1896	17,375.00	15,678.23
1897	3,175.00	38,083.62
1898	4,975.00	18,488.31
1899	3,300.00	25,232.41
1900	10,905.00	8,437.50
1901	13,529.00	27,030.29
1902	26,019.00	10,561.80
1903	32,793.02	18,427.32
1904	16,765.00	66,728.25
1905	27,569.50	128,111.34
1906	25,525.00	139,915.67
1907	31,985.00	163,833.11
1908	21,000.00	216,433.69
1909	22,400.00	119,393.52
1910	23,200.00	303,952.42
1911	17,600.00	312,309.29
1912	12,200.00	258,768.21
Total	$443,665.77	$2,059,991.85
Total from all sources		$2,503,667.62[33]

[32] *Auditor's Report*, 1911-1912, p. 62.
[33] *Ibid.*

CHAPTER VII

THE LOSS OF THE MOUNTAIN IRON MINE

On February 9, 1884, the state auditor, W. W. Braden, made a list of selections of indemnity school lands in certain townships in St. Louis County, in lieu of certain sections which the state could not obtain. This list was numbered list No. 9, and was in exact accordance with the regulations of the United States land office, in force at that time. In this was included the land which is known to-day as the Mountain Iron Mine, the most valuable iron mine in the world, estimated to have been worth $20,000,000.[1]

On the same day list No. 9 was filed in the United States land office at Duluth. The register and receiver at that office appended to it their certificate that the list had been filed, that the selections were correct, and that there were no conflicting claims. The government officials at Duluth then forwarded the list to the general land office at Washington and the selections were noted on the tract books of the general government March 25, 1884. The lands included in the list were withdrawn from the market and parties who subsequently sought to make entry were ruled out by the general government on the ground that these subdivisions were the property of the state of Minnesota.[2] No patent, however, was issued to the state and nothing further was done affecting the state's claim until January 26, 1888.

On that day State Auditor Braden caused a new list, No. 12, taking the place of lists Nos. 1 to 11, together with a relinquishment of the selections made in the old lists, to be filed in the United States Land Office at Duluth. March 15, 1888, the commissioner of the general land office agreed to accept the change. Such, in the barest outline, is the history of the events which led to the loss of the Mountain Iron Mine to the permanent school fund.[3]

The enormous value of the property concerned and its consequent importance to the permanent school fund may make it worth while to consider the transaction in more detail and with special reference to three questions: 1. Did the state auditor act in good faith when he relinquished the state's claim? 2. Did the state ever have title to the land? 3. Granting that the state once had title could it relinquish its title in the manner pursued?

In order to answer the first question it is necessary to have before us the entire transaction in detail. From sworn testimony taken before the legislative investigating committee of 1897, it appears that in 1887, several months before Braden relinquished the land, one John Helmer, acting in conjunction

[1] *Auditor's Report*, 1895-1896, p. 61.
[2] "Report of the Joint Committee on the Mountain Iron Mine," in *Journal of the House*, 1897, ap., 79.
[3] *Ibid.*, 84-85.

with a Duluth attorney by the name of Ralph N. Marble and guided by consultation with one Alfred Merritt, made a filing upon the land in question in the name of his brother Joshua Helmer, and placed his brother upon the land as a homestead settler.[4]

This attempt to homestead land apparently belonging to the state was a somewhat extraordinary performance. The testimony of Mr. Helmer before the investigating committee explains the situation.

Question: "In 1887 you located upon the land, did you?" Answer: "Yes, sir, located my brother on it; I had no homestead right myself."

Question: "Now, Mr. Helmer, in doing so, were you acting alone, or in connection with other parties?" Answer: "In connection with a lawyer."

Question: "Will you be kind enough to give us his name?" Answer: "R. N. Marble was the attorney, and also an interested party."

Question: "Well, was there any one else had an interest in that?" Answer: "Not directly, no, sir."

Question: "Were any of the Merritts interested in it?" Answer: "No, sir; only through advice; I used to consult with Alf. Merritt about a great many things and the way I come to, after I looked the land over and see that it had a very good prospect."

Question: "Prospects for what?" Answer: "Of iron; there was no timber on it of any account, and I went to Mr. Merritt and told him about it, but it was L.S.L., and so he said he would look the matter up carefully, and see what could be done about it. In the meantime I consulted Mr. Marble, and he said he thought there was a possible way to get it."

Question: "Get it from the state?" Answer: "Yes; Mr. Merritt informed me later he had discovered that the state's title was faulty, and if we would file an application, the chances were that we would get it, but the filing was rejected by the local land office, and we took an appeal, and in the meantime he had some correspondence with the state officials down here."

Question: "Who did this?" Answer: "Mr. Marble. And in a short time while the land was relinquished; so we went on with it."

Question: "Who suggested to you first that you should go on the land?" Answer: "It was Mr. Marble. I told him, 'You know the land has good indications of iron on it,' and I showed him a lot of specimens—I have some at home now—have got some iron ore that we found at that time. And I told him the prospects were good. I wanted to know if he knew of some way to get hold of it; so he told me he thought there was a way, and he commenced correspondence with the state officials. I think with the attorney general."

Question: "Mr. Clapp?" Answer: "I think the correspondence was with Mr. Childs."

[4] *Ibid.*, 99.

Question: "He was deputy-attorney at that time?" Answer: "Yes, I think he was."

Question: "Mr. Helmer, did your brother or any one of you who were holding this claim make any application to the state auditor?" Answer: "No, sir; not directly."

Question: "Did you indirectly?" Answer: "Mr. Marble was supposed to have done that, although I never see the correspondence—he was supposed to correspond with the attorney-general and the state auditor both; and he told me he had done so, although I never see the correspondence."[5]

This testimony shows little more than that there was concerted action on the part of a small group of men to deprive the state of its title or claim to land which held out indications of being valuable for iron ore. It does not conclusively implicate the state auditor. But the circumstances attending the relinquishment strengthen the case against him. In 1887 the mode of making selections had been slightly changed by a ruling of the land department at Washington. January 11, 1888, Auditor Braden wrote to the land commissioner as follows:

"State of Minnesota,
Auditor's Office, Land Dept.,
St. Paul, January 11, 1888.

S. M. Stockslager,
Acting Commissioner of the General Land Office,
Washington, D. C.

Dear Sir: I received some time ago a copy of letter from General Land Office to register and receiver, St. Cloud, Minn., dated June 29, 1887, which reads as follows: 'Hereafter it will be insisted on that the area of the selected tracts and their basis must be equal and the selections must be separate and distinct, so that action thereon may be taken separately, etc.' This was said regarding our indemnity school land selections. Now the lists in the several land districts in the state have not been made in conformity with these instructions. Will it be necessary for the state to make new selections in lieu of those made? I was considering whether or not it would not be proper to relinquish all selections made and make new lists. Will you kindly advise me if it will be necessary to do this and oblige,

Very truly yours,
W. W. Braden,
Auditor."[6]

The United States land commissioner replied on January 25, advising against the filing of a substitute list. He said in part: "I have to state that some of the selections to which you refer are before the honorable secretary

[5] *Ibid.*, 99-101.
[6] *Ibid.*, 82.

of the interior on appeal by the state from the action of this office rejecting them, and under all circumstances it is thought better that this office pass upon the question presented when the lists not passed upon are reached for examination and action."[7]

On January 26, the day after this letter was written, Braden filed the relinquishment of the state's claim to the lands embraced in lists 1 to 11 at the land office at Duluth. In this letter he stated: "I do this merely because I think these new lists more nearly conform with what I understand to be the wishes of the authorities at Washington."[8] As a matter of fact, as the letter in reply to his inquiry was written on January 25, 1888, only one day after his letter of relinquishment,[9] Braden could not have known what were the wishes of the authorities at Washington unless he had received advance information by telegram of the attitude of the land commissioner, and in that event he must have known that he was not acting in accordance with but directly contrary to the wishes of that officer.[10]

Moreover, if his only purpose in changing the state's land selection was to conform to the regulations of the land department it is strange that he should have included in the new list, No. 12, practically the same lands as in the old list, but omitted the three forty-acre lots containing the Mountain Iron Mine.

This, however, might be looked upon as merely an unfortunate accident were it not for the fact that Braden not alone knew in a general way that there was iron on the lands on the Mesabi Range, but had his attention definitely called to the fact that there were prospects of iron ore on the particular lands omitted from the second list. Before the time of the relinquishment the state geologist, N. H. Winchell, called Braden's attention again and again to the fact that the lands upon the Mesabi Range contained iron and advised him to hold onto any lands which the state might own in that region.[11] And in September, 1887, M. W. McDonald and C. C. Merritt, who had discovered iron ore on the land, made a written application to the state auditor to secure a mineral lease of the N.W.¼ of the N.W.¼ and the E.½ of the N.W.¼ of section 3, township 58 N., range 18, precisely the land embraced in the Mountain Iron Mine property. The state auditor replied that the lands could not be secured by lease or purchase.[12]

While the evidence does not prove that Braden acted in bad faith it makes a strong case against him for the following reasons:

1. He relinquished the land selections of 1884 without apparent advantage to the public and without sufficient occasion.

[7] *Ibid.*, 81-82.
[8] *Ibid.*, 85.
[9] Mr. Braden's letter relinquishing lists 1 to 11 was written January 25, 1888, but the relinquishment was not filed till the next day.
[10] "Report of the Joint Committee on the Mountain Iron Mine," in *Journal of the House*, 1897, ap., 83.
[11] *Ibid.*, 94.
[12] *Ibid.*, 96-97.

2. He omitted from the new list the particular tracts containing minerals.

3. Before making out the new list he received definite information that there were mineral prospects on the lands omitted from the second list.

When the state had relinquished its claim, Mr. Helmer secured an apparently valid claim. He in turn, however, relinquished his right to an agent of the Merritts for $15,000, less than one thousandth part of the value of the lands. The money was furnished by Roswell H. Palmer, C. C. Merritt, and Alfred Merritt, all of whom became stockholders in the Mountain Iron Company. The Rockefellers subsequently joined the copartnership.[13]

More important than the question of fixing the responsibility for the loss of the property, however, is the question whether the state ever had the title, and, if so, whether the auditor could divest the state of its title in the manner pursued.

As to the first question there is a wide difference of opinion. The legislative investigating committee had no hesitancy in saying "that the lands in controversy became in 1884 the property of the state as part of the school lands of the state."[14]

But the attorney general of Minnesota, H. W. Childs, took an entirely different view of the matter when it came up for consideration in 1897. Because of the importance of the controversy his opinion is given in full.

"No action has been instituted for the purpose of recovering what is known as the Mountain Iron property for the reason that counsel are satisfied that the state never had any title to the property, and could not therefore maintain an action for its recovery.

"Briefly stated, the property in question was included in a list prepared by the state auditor designed as selections of indemnity school lands. Subsequently, a new list was prepared and substituted for the first one, from which the said property was omitted. The state acquires no legal rights to lands embraced in such lists inasmuch as no authority has been conferred upon the state auditor in such respect. The lists thus prepared serve at best merely as an aid to the secretary of the interior in preparing his own official lists, by which alone the title can be affected. Until the secretary has thus acted he has complete jurisdiction over the matter and is at liberty to wholly ignore the selections made by the state auditor and make other disposition of them. The secretary did not act in regard to any of the lands in question prior to the date of substitution of the said lists. He finally certified to the state a list of lands equivalent in quantity to those embraced in the state auditor's lists, and the land in question was thereafter conveyed by patent."

In his report to the state legislature in 1897 State Auditor Dunn called the attention of the legislature to the loss of the Mountain Iron Mine and

[13] *Ibid.*, ap., 104-105.
[14] *Ibid.*, 106.

suggested that it might still be recovered.[15] A measure was accordingly introduced in the house by Ignatius Donnelly, providing for the appointment of a joint committee of the two houses to investigate the matter and report to the legislature what steps should be taken to protect the rights of the state. The resolution was passed and the committee made an investigation which resulted in the following recommendations:

"That the two Houses unite in the appointment of a Joint Committee, to consist of three Senators and four members of the House of Representatives . . . . to sit after adjournment of the present session and during the recess of the same, with power to institute, in the name of the state, such proceedings as may be deemed necessary; and to employ suitable counsel to conduct the same; and to compel the present occupants of the lands in question to account for the use of said property and the repayment of the profits derived therefrom, and also the delivery of the lands themselves to the state." The committee accordingly recommended that a measure then before the house, embodying these propositions, should be passed.[16] This measure also provided that $25,000 should be appropriated to carry on the work.

But the measure met strong opposition in the house. An amendment which altered the entire character of the bill, making the attorney general and auditor parties to make the investigation, only failed by a vote of 47 to 57.[17] The Republicans and Democrats were practically evenly divided, the Populist vote defeating the proposed change. When the measure reached the senate it was more successfully attacked by way of amendment. As amended it provided that the auditor, attorney general, and governor should make a thorough investigation of all the facts pertaining to the rights of the state to the lands containing the Mountain Iron Mine, and institute such legal proceedings as they might deem necessary to protect the rights of the state. The appropriation for this purpose was reduced to $10,000. In this form the measure was finally passed.

The action of this committee has already been referred to. Attorney General Childs and his counsel concluded that the state had never had title and could therefore not hope to recover the lands. Accordingly no action was brought.

[15] *Auditor's Report*, 1895-1896, p. 62.
[16] "Report of the Joint Committee on the Mountain Iron Mine," in *Journal of the House*, 1897, ap., 107.
[17] *Journal of the House*, 1897, p. 1019.

CHAPTER VIII

THE INVESTMENT AND PROTECTION OF THE PERMANENT TRUST FUNDS

When the constitutional convention and the state legislature adopted the policy of making the trust funds permanent they thereby placed the state government in the responsible position of caring for funds which now aggregate nearly twenty-eight million dollars and to which each year adds over a million. This has given rise to a separate problem in the land administration, the management of the permanent trust funds. Of the many questions that have arisen, two have been of primary importance: How to invest the state's money in securities that are safe and profitable at the same time; and how to give the people of the state the advantage of the use of the money in the permanent funds and still maintain a safe, business-like administration. The success of the administration was to depend on the solution of these problems and the proper balancing of the two motives.

Since the territorial legislature had no land at its disposal the problem did not arise until the admission of the state into the Union. In 1861, in the same act which provided for the sale of school lands, provision was made for the investment of the resulting funds. The board of commissioners of school lands, consisting of the governor, attorney general, and superintendent of public instruction,[1] were directed to invest the permanent school fund in United States bonds or state bonds at current value in New York. Upon each certificate was to be written "Minnesota School Fund."[2] The state auditor, as register of the board, and the state treasurer, as receiver, were required to keep an account of sales of public lands, of contracts and leases, and of the resulting funds, and a separate account of the permanent and current school fund.[3] The receiver was required to give bonds in the sum of $10,000.[4]

At least once in each quarter of the fiscal year the board was directed to examine the books.[5] The second Tuesday in December was set for the annual settlement of accounts between the board and the treasurer.[6] On or before this date the county treasurers were required to place in his hands the school funds received during the year. The superintendent of public instruction was required to incorporate in his annual report a statement concerning the condition of the funds.[7]

[1] *Laws of Minnesota*, 1861, chap. 14, sec. 1.
[2] *Ibid.*, sec. 43.
[3] *Ibid.*, secs. 4, 5, 37.
[4] *Ibid.*, sec. 5.
[5] *Ibid.*, sec. 3.
[6] *Ibid.*, sec. 8.
[7] *Ibid.*, sec. 37.

In a very general way this act outlined the policy subsequently pursued. The investment of the funds by a board in certain specified kinds of securities, the position of the auditor and treasurer as register and receiver of the funds, the collection of the money through the county treasurers, the safeguarding of the funds through the requirement of bonds and the inspection of records—these features have been permanent. Minor changes in the law and numerous additions will have to be noted, however.

In 1863 a special board of investment was created, consisting of the governor, auditor, and treasurer. The same securities were left open to investment, with the additional restriction that all United States bonds to be purchased must bear at least six per cent interest. Transfers of bonds could now be made only upon the order of the governor.[8]

In 1868 the laws concerning the management of the permanent school fund were extended to the university fund, which was just beginning to accumulate.[9]

In 1873 the board was enlarged so as to include the chief justice of the supreme court and the president of the Board of Regents. To prevent loss from the accumulation of large sums of unproductive money it was provided that whenever the permanent school fund and university fund should have $10,000 to their credit the board of investment should purchase bonds.[10] The same legislature passed an act constituting the governor, secretary of state, and attorney general a board of auditors to examine the records and count the funds of the state treasurer. This was to be done at least four times a year. No notice was to be given.[11]

The provision of the federal Constitution forbidding the state to emit bills of credit has meant that accumulations in state treasuries have been so much unproductive property. The gold and silver in the national treasury perform a necessary function in serving as a backing for the various issues of paper money. It is neither desirable nor possible to make a similar use of Minnesota's reserve funds. Thus there was an annual loss which some years amounted to several thousand dollars because large sums for which there was no immediate use lay idle. This condition continued till 1873, when an act was passed providing that all the state funds should be deposited in one or more national banks. Such banks were to be selected by the board of auditors after advertising in one of the daily newspapers of St. Paul for two weeks or more for proposals stating what security would be given and what rate of interest paid on weekly balances. No bank could be designated as a depository unless it offered to place in the state treasury as security state or federal bonds equal in market value to the sum to be placed in its keeping.[12]

[8] *Ibid.*, 1863, chap. 12, sec. 7.
[9] *Ibid.*, 1868, chap. 55, sec. 1.
[10] *Ibid.*, 1873, chap. 33, sec. 1.
[11] *Ibid.*, chap. 34, sec. 1.
[12] *Ibid.*, secs. 2-4.

At about the same time an act was passed that made a corresponding provision for state funds in the hands of county treasurers. For this purpose, however, all banks were made depositories. The safety of the funds was insured by requiring a bond in at least double the amount of the deposit signed by at least five freeholders. The county auditor, the chairman of the board of county commissioners, and the clerk of the district court were created a board of auditors with functions corresponding to those of the state board. Neglect to act made the guilty parties liable to a fine of from $100 to $500.[13]

But in the opinion of the attorney general these laws were unconstitutional. Section 12 of article 9 of the state constitution originally provided that all officers charged with the safekeeping, transfer, or disbursement of state and school funds must give ample security for all money and securities received by them. The section continued: "And if any of said officers or other persons shall convert to his own use in any form, or shall loan with or without interest, contrary to law, or shall deposit in banks, or exchange for other funds, any portion of the funds of the State, every such act shall be adjudged to be an embezzlement of so much of the State funds as shall be thus taken, and shall be declared a felony; and any failure to pay over or produce the State or School funds intrusted to such persons, on demand, shall be held and taken to be prima facie evidence of such embezzlement."[14] This clause was amended in 1873 so as to read: "And if any of said officers or other persons shall convert to his own use in any manner or form, or shall loan with or without interest, or shall deposit in his own name or otherwise than in the name of the state of Minnesota, or shall deposit in banks or with any person or persons, or exchange for other funds or property, any portion of the funds of the state or of the school funds aforesaid, except in the manner prescribed by law, every such act shall be and constitute an embezzlement."[15]

In 1874 the state treasurer was required to publish bi-monthly in one or more of the daily newspapers of St. Paul a condensed statement of the condition of the several funds in his hands at the date of the publication. As soon as the accumulation of any permanent trust fund should amount to $1,000, bonds must be purchased. This requirement, if strictly adhered to, would effectually have prevented large accumulations of idle money. But $1,000 proved too small a sum for the most productive investment, and in 1895 the amount was again fixed at $10,000. Instead of requiring a deposit of bonds the act of 1874 required the depositories to give personal bonds satisfactory to the treasurer and the board of auditors. Every such bond had to be in double the amount of the deposit and had to have the backing of

[13] *Ibid.*, chap. 38, secs. 1-5.
[14] *Constitution of Minnesota*, art. 9, sec. 12; *Journal of the Constitutional Convention*, 187.
[15] *Constitution of Minnesota*, art. 9, sec. 12; *Revised Laws of Minnesota*, 1905, p. 1183.

at least five sureties. Interest was to be calculated on daily instead of weekly balances and at no time was the rate to be less than that paid on daily balances by leading New York banks.[16]

In 1875 the policy of the legislature in providing that school funds should be invested in state and United States bonds was incorporated in an amendment to the constitution.[17] The same year the setting apart of 525,000 acres of swamp land for various state institutions made necessary a provision for the investment of the prospective fund. An act was passed declaring that this should be invested in the same manner as the permanent school fund.[18] By a constitutional amendment of 1872 the internal improvement land fund could be invested only in Minnesota and United States bonds.[19] The act of 1868 providing that the proceeds from the sale of agricultural college and university lands should be invested in the same manner as the permanent school fund has already been referred to. Thus, by 1875, there was a statutory or constitutional provision for the investment of the income from all of the five classes of land which were to give rise to permanent funds.

That class of acts designating in what class of securities the trust funds might be invested have thus far been omitted in order that they might be taken up consecutively at this point. The constitution of the state in its original form imposed no restriction upon the investment of any fund. The act of 1861 limited the investment of the permanent school fund to bonds of the United States or of the state.[20] The investment in Minnesota bonds was limited the next year to eight per cent bonds.[21] This was amended in 1863 by confining the investment in United States bonds to such as bore six per cent or more and removing the restriction on investment in Minnesota bonds, but lest the "Railroad Bonds" should be regarded as Minnesota bonds these were specifically excepted.[22]

This arrangement proved satisfactory during the war period, when the state borrowed money at high rates, and United States bonds were at par or below. By 1869, however, this narrow limitation had become detrimental. In his report for that year the state auditor pointed out that United States six per cent bonds sold at 106¾ while Michigan seven per cent bonds could be purchased at par. Had not the law indicated the kind of bonds Michigan bonds would have been purchased, giving an income of seven dollars on an investment of $100 instead of six dollars on $106.75. He therefore recommended that bonds of the northern states be included among those open to investment.[23] An act was passed in 1870 directing the board to sell $77,800 of United States 5-20 bonds and invest the proceeds in such

[16] *Laws of Minnesota*, 1874, chap. 11, sec. 1.
[17] *Ibid.*, 1875, chap. 3, sec. 1.
[18] *Ibid.*, 1875, chap. 95, sec. 1 (secs. 1, 3).
[19] *Constitution of Minnesota*, art. 4, sec. 32b; *Revised Laws of Minnesota*, 1905, 1171.
[20] *Laws of Minnesota*, 1861, chap. 14, sec. 43.
[21] *Ibid.*, 1862, chap. 62, sec. 53.
[22] *Ibid.*, 1863, chap. 12, sec. 53.
[23] "Auditor's Report," 1869, in *Minnesota Executive Documents*, 1869, p. 698.

bonds of New York, Pennsylvania, Ohio, Illinois, Michigan, Wisconsin, or Iowa as would pay the highest interest and afford the best security.[24] In 1872 Missouri bonds were added[25] and in 1875 Indiana and Massachusetts.[26] In 1873 bonds of other states bearing less than six per cent, Minnesota and federal bonds bearing less than four, and bonds issued to aid in railroad construction were withdrawn from the field open to investment.[27] In 1875, by an amendment to the constitution, the investment of the permanent school fund was limited to state and United States bonds.[28] A statute of this year provided that the state institutions fund should be invested in the same manner as the permanent school fund.[29]

But notwithstanding this extension of the field it became increasingly difficult to secure good interest rates. Up to 1875 Missouri bonds had been below par, and money placed in these securities yielded a large return. But in that year Missouri bonds rose to par and bade fair to go higher, and those of northern and eastern states were already above par. Wisconsin had been confronted with the same problem and had solved it to her satisfaction by loaning money from the trust funds to counties and school districts. The state auditor therefore recommended that the legislature should propose an amendment to the constitution making it possible for Minnesota to follow this example.[30] But instead of opening new channels for the funds the legislature sought to accomplish the same end by successive reductions in the interest on outstanding land contracts, as has been explained in a previous chapter.

But interest rates on state securities continued to decline, and prices soared. United States six per cent bonds sold at 131½ in 1883.[31] At this rate four and one-half per cent bonds at par yielded nearly as high a rate of interest. Moreover, counties and school districts were anxious to borrow money for the erection of public buildings and were willing to pay higher rates than the bonds in the market were yielding. The legislature finally yielded to the double pressure and proposed an amendment to the constitution making it lawful to loan the permanent school fund of the state to the several counties and school districts, to be used in the erection of county buildings or school buildings. The rate of interest was fixed at five per cent. No loan was to be made until approved by a board consisting of the governor, auditor, and treasurer, nor to an amount greater than three per cent of the assessed valuation of the county or school district according to the last assessment. To insure payment it was made the duty of the state auditor to include with the state tax certified to county auditors the amount

[24] *Laws of Minnesota*, 1870, 204, Joint Resolution no. 2.
[25] *Ibid.*, 1872, 204, Joint Resolution no. 3.
[26] *Ibid.*, 1875, chap. 105.
[27] *Ibid.*, 1873, chap. 33, sec. 1.
[28] *Ibid.*, 1878, 14.
[29] *Ibid.*, 1875, chap. 95, sec. 3.
[30] "Auditor's Report," in *Minnesota Executive Documents*, 1875, 1: 33.
[31] *Ibid.*, 1883-1884, 4: 62.

necessary to meet the interest on any such loan and of the principal when due. The county auditor was required to include one and a half times this amount in the tax list of the county or school district. Lest the state's security might be impaired it was provided that no change in the boundaries of any school district should operate to withdraw any of the property from taxation for the purpose mentioned. No law could be passed extending the time of payment of interest or principal, or reducing the rate of interest, or waiving or impairing the rights of the state in connection with any such loan. This amendment was submitted to the people in the November election of 1888 and accepted by a vote of 131,533 to 71,914.[82]

The next year the legislature passed an act prescribing the mode of procedure in making loans, the important provisions of which are still in force. Any county desiring to secure the use of a portion of the permanent school fund is required to adopt a resolution to that effect through its county commissioners specifying for what purpose the money will be used. The county auditor is then to report the action taken to the state auditor and to certify the taxable valuation of the county, its indebtedness, and the money in the county treasury available for paying such indebtedness. A school district desiring a loan is required to take a vote upon the question at a regular or special school meeting. If a majority of the voters at such a meeting favor the project it becomes the duty of the clerk of the district to make a report of the proceedings to the state auditor giving the number of votes cast for and against the measure, a certified copy of the notice posted to call the meeting, a description of the land of the district and of the district's indebtedness, and a certified statement from the county auditor showing the valuation of real estate and personal property in the district according to the last assessment. In the case of independent and high school districts the mode of procedure is nearly the same.

The board of investment meets on the first Monday of each month to pass upon applications for loans. The order of preference is as follows: common school districts, independent school districts, high school districts, counties. Additional information can be required by the board and unsatisfactory applications can be rejected. No application can be granted until the attorney general has passed upon it and held it to be in conformity with the law.

The bonds are to be signed by the proper officers of the county or school district in such form as the investment board may prescribe. When they are presented to the state auditor he draws his warrant on the state treasurer for the amount. The auditor thereupon deposits the bonds with the treasurer, and then the latter pays over the money.[83]

The importance of this statute is shown by the fact that by 1890, only six

[82] *Laws of Minnesota*, 1885, chap. 1; *Ibid.*, 1887, p. 2.
[83] *Ibid.*, 1887, chap. 193, secs. 1, 2, 3, 4, 6, 7.

years later, eight hundred forty school districts and six counties had made use of the opportunity presented. The total loans amounted to $630,907.83.[34]

The sum would have been far larger but for the limitation upon the amount which each division could secure. With the financial panic of 1893 and the hard times following the need for larger loans became more and more pressing. A further amendment was therefore proposed in 1895, which authorized larger loans and made other alterations of importance. The permanent university fund as well as the school fund was now included. These funds might be invested in the bonds of any school district, county, city, town, or village of the state without any restriction as to the purpose for which the money was to be used. Instead of limiting the amount to three per cent of the assessed valuation of the property of the district attention was now directed to the total indebtedness—the only business-like way—and it was provided that there should be no investment in the bonds of any division when the issue of which they made a part brought the entire bonded indebtedness of such division above seven per cent of its assessed valuation. The minimum interest rate was reduced from five to three per cent. The bonds to be purchased were to run not less than five nor more than twenty years. No change in the boundary of any division was to relieve any part of it from liability. Each investment was to be passed upon by the board of commissioners designated by law to look after the investment of the permanent school fund and permanent university fund.[35] This amendment received the approval of the voters of the state in November, 1896, by an overwhelming majority.[36] The legislature was now free to extend the earlier law and accordingly passed an act at the next session including cities, villages, and townships. In cities and villages the common council was authorized to apply for the loan; in the towns this authority was given to the board of supervisors. The interest rate was reduced to four per cent. The amount to be placed upon the tax list of the proper division was reduced from 150 to 130 per cent of the amount due; but the former figure was restored in 1909. Outside of these modifications the statute is practically a copy of the previous one.[37]

The next legislature proposed to extend the amendment of 1896 so as to provide that no loan should be made to any division which would make its entire bonded indebtedness exceed fifteen per cent of its assessed valuation.[38] But the people of the state disapproved the change. The legislature submitted the proposal again in 1901 and the voters again rejected it. The amendment was submitted and rejected at three successive biennial elec-

[34] "Auditor's Report," 1889-1890, *Minnesota Executive Documents*, 1889-1890, p. 12.
[35] *Laws of Minnesota*, 1895, chap. 6.
[36] *Ibid.*, 1897, p. vii.
[37] *Ibid.*, 1897, chap. 83, secs. 4, 5, 8, 12.
[38] *Ibid.*, chap. 92.

tions.[39] Finally, in the fall of 1905, the increased desire for larger loans from the state funds and the greater familiarity of the voters with the measure told in its favor, and it was accepted by a vote of 190,718 to 39,334.[40]

The first investment of the permanent funds was made in 1863, when $111,687.50 of the permanent school fund was applied to the purchase of Minnesota seven per cent War Loan Bonds and United States six per cent 5-20 bonds. The policy of buying Minnesota bonds has been followed at all times. Not infrequently all unredeemed state bonds have been in the state treasury credited to the permanent funds. Up to 1870 all investments were made in United States or Minnesota bonds,[41] the only securities open to investment. In 1871 the land commissioner purchased $50,000 of Missouri six per cent bonds without authority.[42] The legislature of 1872 authorized further investments.[43] By 1873 the permanent school fund held $159,000 of Missouri six per cent, $348,000 of Minnesota seven per cent, and $442,800 of United States six per cent bonds, and the permanent university fund, $5,000 of Minnesota seven per cent and $12,000 of United States six per cent bonds.[44] During the ten-year period following all permanent funds of the state were placed in these three classes of securities. In order to make possible the purchase of the large issue of Minnesota Railroad Adjustment Bonds in 1881 a large part of the other bonds belonging to the school and university funds were sold. In 1884 the permanent school fund held $2,123,000 of Minnesota bonds, $425,000 of United States four and four and one half per cent bonds, and $81,000 of Missouri six per cent bonds; $3,126,313.08 were in land contracts bearing seven per cent. The permanent university fund had $277,000 of Minnesota Railroad Adjustment Bonds and $347,226.69 in land contracts. The internal improvement land fund had land contracts outstanding to the amount of $962,470.60 and held $322,000 of Railroad Adjustment Bonds.[45] During the next decade Tennessee, Alabama, and Minnesota furnished all the state bonds purchased. In 1894 the permanent school fund held $303,737.50 of Alabama four and five per cent bonds, $409,000 of Minnesota three and one half and four per cent bonds, and no less than $2,144,900 of Tennessee three and four and one half per cent bonds. The school district and county five per cent bonds amounted to $1,027,739.72 and the land contracts to $6,711,863.43. The permanent university fund held bonds of Minnesota and Tennessee aggregating, with the land contracts, a little over $1,000,000. The internal improvement land fund, which had been devoted to the liquidation of the

[39] *Ibid.*, 1901, pp. iv-v; 1903, chap. 25.
[40] *Ibid.*, 1905, p. 4.
[41] *Treasurer's Report*, 1870; *Laws of Minnesota*, 1871, p. 219.
[42] *Auditor's Report*, 1871, p. 12.
[43] *Laws of Minnesota*, 1872, p. 204, Joint Resolution no. 3.
[44] "Treasurer's Report," 26-27, in *Minnesota Executive Documents*, 1873, p. 2.
[45] *Auditor's Report*, 1881-1882, p. 59; 1883-1884, pp. 44-45.

Railroad Adjustment Bonds in 1881, had paid $2,533,000 of these bonds, and had about $110,000 to its credit in cash and land contracts. The state institutions fund had begun to accumulate, but no investments had been made.[46] From 1894 to 1904 Massachusetts, Virginia, Alabama, Louisiana, Utah, Delaware, Minnesota, and the local divisions of the state furnished the bonds purchased. The investments in the bonds of Massachusetts, Virginia, and Minnesota were especially large, the holdings of these securities by the permanent school fund in 1904 amounting to $2,895,000, $1,635,000, and $2,288,000 respectively. The large amount of Minnesota bonds on the market is accounted for by the building of the new capitol. The amount in school district, city, county, and township bonds had more than doubled, amounting now to $2,359,496.99, while the total sum owing on land contracts had decreased to $5,715,136.31. The permanent university fund, which had passed by $367,638.97 the million dollar mark prophesied for it by early auditors, held practically the same classes of securities as the school fund. The internal improvement land fund held $227,577.58 in land contracts, $23,000 of Louisiana four per cent, and $55,000 of Virginia three per cent bonds. The state institutions fund held a total of $288,000 of Louisiana four per cent and Virginia and Minnesota three per cent bonds. With the outstanding land contracts and the cash on hand the fund amounted to $514,465.54. During this decade another fund appeared, the swamp land fund. The enormous grants of swamp land to railroads and other corporations had delayed the sale of the swamp lands. During the decade all these grants were adjusted, and sales commenced. By 1904 this fund had reached $80,685.32, of which $50,000 had been placed in Minnesota Capitol Bonds.[47]

July 31, 1912, the permanent school fund had reached $22,614,294.33. Of this total $13,476,254 are the returns from sales of land, $6,416,461 from sales of timber, $1,867,991 from royalty on iron ore, $295,601 from mineral leases and contracts, and $361,570 from the profits on the sale of bonds. The large amount of the last item speaks well for the efficiency of the work of the investment commission.

One striking change in the investments should be noted. The total amount of the school district, city, county, and township bonds held by the permanent funds had increased in the eight years from $2,502,697 to $12,291,051. Of this amount $10,832,651 were held by the permanent school fund, $820,956 by the swamp land fund, and $637,444 by the permanent university fund. The explanation for the sudden and remarkable increase is found in the constitutional amendment of 1905. There were $7,922,620 in land contracts, $217,593 in the state treasury, and $6,779,504 in the bonds of eight states, Minnesota, Alabama, Virginia, Louisiana, Tennessee, Utah, Delaware, and Massachusetts.

[46] *Ibid.*, 1893-1894, pp. 8-11.
[47] *Ibid.*, 1903-1904, pp. iv-vi.

The internal improvement land fund, in addition to paying out $2,533,00 for the Railroad Bonds, had an accumulation of $418,611.12. The state inst tutions fund and swamp land fund, both the product of the swamp lan grant and now finally devoted to the same purposes, had been united as th swamp land fund, and amounted to $2,671,727.12.[48] The permanent uni versity fund amounted to $1,506,136.12.

The story of the management of the permanent funds is a record o efficiency. The question of the safe and profitable investment of the state' permanent funds has been met and solved. It is no mere accident that th permanent school fund has been increased by more than a third of a millio by the purchase and sale of bonds. The interest rates maintained on lan contracts have been such as to keep a large proportion of the funds in a clas of securities of unquestioned safety. They have been high enough to yiel an income larger than a corresponding investment in bonds and yet lo enough to offer a distinct advantage to purchasers over rates that could b secured from private parties. The question of how to give the local com munities of the state the advantage of the use of a portion of the permaner funds has also been satisfactorily adjusted. The analysis of the statute ha shown the sufficiency of the safeguards with which these loans are hedge Their amount speaks for the greatness of the need that has been satisfied.

[48] *Ibid.*, 1911-1912, pp. VII-VIII, 6-15.

CHAPTER IX

EARLY FINANCES OF THE UNIVERSITY AND THE UNIVERSITY LANDS

The University of Minnesota, which to-day has to its credit a permanent fund of over one and a half million dollars,[1] besides owning mineral lands that promise in time to bring it an endowment that will compare favorably with the endowments of the wealthiest of the state universities, was during the late fifties and early sixties virtually bankrupt. It is not my purpose to relate the financial history of the University, but the financial condition of the institution during the first years of its existence is so closely interwoven with the land policy of the Board of Regents and legislature that a knowledge of the one requires an understanding of the other.

The first mention of the University of Minnesota in a public document occurs in Governor Ramsey's message to the second legislative assembly of the territory, in 1851, in which he suggested that it might be well to memorialize Congress for a grant of one hundred thousand acres of land for the endowment of a university.[2] The legislature followed the governor's suggestion.[3] The petition proved unnecessary, however, for on the same day the president signed the act, mentioned in a previous chapter, which directed the secretary of the interior to set apart and reserve from sale from the public lands in the territory a quantity of land not exceeding two townships for the use and support of a university in the territory.[4] Before the news reached St. Paul an act was passed incorporating the University of Minnesota. The government of the institution was vested in a board of twelve regents to be elected by the two houses of the legislature in joint meeting. To the regents were entrusted the selection, management, and control of all lands that might be granted by Congress for the endowment of the University, and the prospective fund was made perpetual.[5]

At the first meeting of the board, June 7, 1851, it was decided to advertise for free gifts of land for a university site. In response several liberal offers were received, and after an examination of the properties the tract offered by Franklin Steele was accepted. Here began that series of indiscreet and unbusiness-like acts which for a time threatened the University with destruction. No deed was secured. When the funds contributed by

[1] *Auditor's Report*, 1907-1908, p. xxx.
[2] *First Annual Report of the Board of Regents*, 1861, pp. 5-6.
[3] *Laws of Minnesota*, 1851, pp. 41-42, Memorial no. 1.
[4] *Statutes at Large*, 9: 568.
[5] *Laws of Minnesota*, 1851, chap. 3, secs. 1-2, 4, 7, 15.

public-spirited citizens had provided a building for a preparatory school it was found that the territory did not have title to the land.

In 1854 Steele proposed to give the University a five-acre lot in some other part of the city in place of the first site, and to purchase the university building. The offer was refused and twenty-five acres of the present campus were purchased, instead, at a cost of $6,000. This was the second cause of the financial embarrassment of the institution—a transaction as unnecessary and as illegal as it was blundering; unnecessary, because as good a site could have been had without cost; illegal, because the charter of the University did not give the regents power to create a debt before funds had been provided to meet it; blundering, because two years later it was discovered that the University had received title to but seventeen of the twenty-five acres for which it had contracted.[6]

In 1856 the legislature authorized the regents to issue bonds to an amount not exceeding fifteen thousand dollars, five thousand to be expended in payment of the debt on the campus and ten thousand in erecting buildings, and to mortgage any lands belonging to the University as security.[7]

The meaning of the legislature was unmistakable. The Board of Regents was empowered to erect a building costing ten thousand dollars and that was the extent of their authority. Nevertheless the regents let a contract for the construction of a forty-nine thousand dollar building. Designs had been drawn for a structure larger than any on the campus to-day, and this building was to be a part of it. A minority of four, be it said to their credit, among whom we find Ramsey and Sibley, voted against the project.[8]

Such was the situation in 1857, when the constitutional convention assembled. The disregard of charter and statutory restrictions by the regents naturally elicited some unfavorable comment in both branches of the convention, which had divided on party lines into two separate bodies, each claiming to be the legal convention. In the Republican section three questions were raised of paramount importance to the future of the University: should the money to be derived from the sale of the university lands be made a perpetual fund; should the fund be indivisible; should the location of the institution be fixed permanently at St. Anthony?

On the first question there was substantial accord. The fund should be made perpetual. Concerning the second the proposition was advanced and defended with more ardor than common sense that it would be no more than fair to other sections of the state to establish branches in various cities, so that St. Anthony might not be the only center to profit by the expenditure of the large university fund. A determined attempt was made to include in

[6] *First Annual Report of the Board of Regents*, 1861, pp. 7-9.
[7] *Laws of Minnesota*, 1856, chap. 122.
[8] *First Annual Report of the Board of Regents*, 1861, p. 10.

the constitution a provision to the effect that the location at St. Anthony should be the permanent one, but this was defeated.[9]

In the Democratic branch of the convention the section regarding the disposition of the university fund came from the committee in almost the exact form in which it appears in the constitution.[10] A lack of confidence in the management of the university property was clearly indicated by the opposition to the proposal to give the University all the land grants which might be made for the support of higher education. Said Mr. Emmett, in his remarks on the subject: "If you look a little further on in the Section, you will see that its phraseology, which on its face seems to be intended to secure the immunities, franchises and endowments which it has already received, has really the effect of securing also to it all other donations for University purposes which may hereafter be made by Congress to the State. Now, sir, the gentleman has disclaimed all intention of covering up anything, and, of course, I take his word for it, but I tell you, sir, there is a nigger under the fence in some place."[11] Attempts to amend the section failed, however, and the Republican branch of the convention accepted it without change.

The section is sufficiently important to give in full. "The location of the University of Minnesota, as established by existing laws, is hereby confirmed, and said institution is hereby declared to be the University of the State of Minnesota. All the rights, immunities, franchises, and endowments heretofore granted or conferred, are hereby perpetuated unto the said University, and all lands which may be granted hereafter by Congress, or other donations for said University purposes, shall vest in the institution referred to in this section."[12] It is evident that the constitution does not make the income from the sale of university land a perpetual fund, but leaves that to be determined by the legislature.

The construction of the university building came to a standstill with the financial crash of 1857, and the regents found themselves with an unfinished building and a heavy debt on their hands, and no funds. But the territorial legislature, at its last session, in order to save the money already invested, came to the rescue, and authorized the issue of bonds to the amount of $40,000. Twelve per cent was fixed as the maximum rate of interest. Payment was to be guaranteed by a mortgage on university land.[13]

The first state legislature passed an act on February 14, 1860, which provided for a new Board of Regents consisting of the governor, lieutenant governor, chancellor, and five members appointed by the governor.[14] The board was given authority to sell the university lands and to use such portions of the resulting fund as it might deem expedient in the purchase

[9] *Minnesota Convention Debates*, 477-491.
[10] *Minnesota Constitutional Debates*, 438, 623.
[11] *Ibid.*, 455.
[12] *Constitution of Minnesota*, art. 8, sec. 4.
[13] *Laws of Minnesota*, 1858, chap. 91.
[14] *Ibid.*, 1860, Chap. 80, Sec. 4.

of apparatus and a library. The land and fund were safeguarded by the provision that no sale should be made unless authorized at a regular meeting of the board and that no member of the board should be interested directly or indirectly in any sale. Any surplus not immediately required "for the purposes of instruction" was to be invested in state or United States bonds "as a perpetual fund for the purpose of securing an income to defray the necessary current expenses."[15]

The authority given was used to make extensive leases of university lands. On December 1, 1861, the treasurer of the board reported nearly 3,000 acres leased. But the income was only $170.20, an average return of only a little more than half a cent for each acre. The contracts called for from ten to twenty cents an acre, but most of the lessees failed to make settlement and left their holdings before payment could be enforced. The income from stumpage amounted to only $600. No lands were sold. After paying the officers and printing the board had $190.37 left with which to meet the annual interest of over $8,000.[16]

The new regents found the accounts of the old board badly tangled. When the books had been straightened out, it appeared that on December 1, 1860, the state University had a debt of about $85,000. The original cost of the building and site, $55,000, had been increased by more than one half through extremely high rates of interest—in many cases no less than thirty per cent.[17] To meet this indebtedness the regents held bills receivable aggregating $6,762.92. Of this amount $4,262.92 was due for stumpage and $2,500 on account of the old university building. Of the total debt, $15,000 consisted of bonds secured by mortgages on the building and site, $40,000, of bonds secured by 20,140 acres of university lands; the rest consisted of notes and accounts on the Board of Regents, and the accrued interest.[18] The bonded debt had express legislative authorization and was, therefore, legally binding on the board. The notes had been given without authority and were of questionable validity. There were thus two questions before the new regents. First, should the validity of the notes and accounts against the University be recognized? Second, how should the debt be paid? In the second annual report both matters were referred to the legislature.[19]

The legislature authorized the regents to sell the university lands to the holders of the university "indebtedness."[20] The question as to the validity of the notes was referred back to the board with authority to compromise the matter or resist payment, as the interests of the University and of the state might dictate.[21]

[15] *Ibid.*, sec. 15.
[16] *Second Annual Report of the Board of Regents*, 1862, pp. 6, 26, 38, 41-42.
[17] *First Annual Report of the Board of Regents*, 1861, pp. 13-15; *Second Annual Report of the Board of Regents*, 1862, p. 6.
[18] *Ibid.*, 6-9.
[19] *Ibid.*, 12-14.
[20] *Laws of Minnesota*, 1862, Special, chap. 87, sec. 1.
[21] *Ibid.*, sec. 2.

In the spring of 1862 Uriah Thomas, secretary of the board, was appointed special agent to negotiate with the creditors for a transfer of land in liquidation of their claims. After months of correspondence and travel he managed to put himself into communication with most of them, but with indifferent success. With the triple disasters of financial panic, Civil War, and Indian massacres, wild lands in Minnesota had become a drug on the market. The proposals received were referred to the regents, who authorized 1,193.26 acres of prairie land in Renville County to be deeded to creditors in payment of claims aggregating $3,273.47. This was at an average rate of $2.74 per acre, the lowest price ever received for university land.[22]

An important development of the year was a supreme court decision in regard to the question of the validity of the notes and judgments against the regents for debts not authorized by acts of the legislature. Judgment had been rendered against the University for material used in the construction of the university building. The attorney general, at the request of the regents, took the case on appeal before the supreme court, which confirmed the decision of the lower court, but held that the judgment was a lien only on the fund of $10,000 provided for the erection of the university building. As this had been expended before the notes were issued it follows that there was no legal process by which this and a number of other notes and judgments could be collected.[23]

The reasoning of the court was as follows:

"1st. The Board of Regents are a public corporation, for the purpose, among other things, of erecting a University building, and for that purpose, with the restrictions hereafter mentioned possess all the power necessary to the attainment of that end. They could make all necessary contracts, and give written evidences to creditors, of debts incurred in and about the work, payable at a future day, but could not execute a negotiable promissory note, in the commercial sense of that term, because they were restricted in their expenditures to the particular fund provided for them by the legislature, and had no power to contract debts upon the credit of any other; and negotiable papers must be payable absolutely.

"2d. That their powers were known to all persons dealing with them.

"3d. That an action may be maintained against them upon any contract which they had power to enter into concerning the erection of the University buildings, but that a judgment recovered upon such contract, would bind only the fund upon the faith of which the credit was originally given.

"4th. That the title to the lands reserved by Congress for the use and support of a State University, is in the State, and not in the corporation,

[22] *Third Annual Report of the Board of Regents*, 1863, pp. 9-12.

[23] "Third Annual Report of the Board of Regents," in *Minnesota Executive Documents*, 1862, p. 745; Hart and Munson *v.* The Regents of the University of Minnesota, Appellants, 7 *Minnesota*, 61.

and all propery acquired by the Regents, real or personal, with the fund placed at their disposal, is the property of the State, the corporation being merely a trustee or agent with specified and limited powers, to use in a particular manner for a given end."

No further progress was made in the liquidation of the debt, for on March 5, 1863, the legislature, dissatisfied with the slow progress made and anxious to reduce the expense of managing the University and its lands, by a unanimous vote in each house,[24] passed a joint resolution, ordering the state auditor to take charge of the lands, building, and grounds, and suspending the operation of the act of 1862,[25] under which payment of the university debt had commenced.

The Board of Regents, unable to secure a quorum, did not turn over the university property to the auditor before September, 1863, and that officer did nothing beyond extending the leases in force. In his annual report he called attention to the fact that the timber was being stripped from the university lands in Rice County, and recommended that the lands should be sold—a curious sidelight on the efficiency of the administration of the land office at this time.[26]

The next legislature reversed the policy of its predecessor. An act was passed on March 4, 1864, appointing three business men, John S. Pillsbury, O. C. Merriman, and John Nicols, sole regents of the University for the term of two years. Each of these men had to file bonds with the secretary of state in the sum of $25,000.[27] All university buildings, lands, and grounds were transferred to the care of this commission and it was authorized to compromise and pay all claims against the University by the sale of an amount of university land not to exceed 12,000 acres. The commission might authorize the state auditor to sell these lands or a part of them, if it chose.[28] All personal property of every nature, such as notes, stocks, bonds, claims, and the proceeds from the sale of lands, while in the hands of the regents, was made exempt from judicial proceedings.[29] The amount of land placed at the disposal of the commission was later increased to 14,000 acres.

For four years[30] these men labored, sacrificing valuable time and business interests, and bringing to the aid of the University the business ability which alone could save something from the wreckage. Well may they be pardoned the note of exultation which runs through their first report, in February, 1867, when the work was all but completed. The policy pursued was to sell agricultuaral lands and with the proceeds take up and cancel the bonds,

[24] *House Journal*, 1863, p. 384; *Senate Journal*, 1863, p. 302.
[25] *Laws of Minnesota*, 1863, p. 268, Joint Resolution no. 11.
[26] "Auditor's Report," in *Minnesota Executive Documents*, 1863, pp. 428-429.
[27] *Laws of Minnesota*, 1864, chap. 18, sec. 1.
[28] *Ibid.*, secs. 4, 8.
[29] *Ibid.*, sec. 7.
[30] Their term of office was extended to four years in 1866. *Laws of Minnesota*, 1866, chap. 11, secs. 1-2.

notes, judgments, and other evidences of indebtedness against the University, for the least amount which the creditors could be persuaded to accept.[31]

At the date of the first report 10,750 acres of land had been sold and $52,000 had been realized. The payments from leases, stumpage, and trespasses raised this total to $60,000. The debt with the accrued interest amounted to $120,000 in June, 1866. Of this all but about $10,000 had been canceled. This means that the creditors of the institution had consented to abate claims aggregating about $50,000. This amount consisted of a reduction of both interest and principal. The amount received by the creditors varied according to the value of their security. The holders of the fifteen bonds secured by the building and campus received the principal on their bonds in full and the major part of the interest. The holders of bonds secured by university lands in some cases had to be content with as little as thirty-six cents on the dollar. The notes and miscellaneous claims were likewise greatly reduced.[32]

When the term of Pillsbury, Merriman, and Nicols ended, in March, 1868, the outstanding indebtedness of the University consisted of but a single one thousand dollar bond, and a mortgage for three thousand dollars on the buildings and campus; and of the 14,000 acres set apart by the legislature there remained 1,690 to meet these claims.[33]

Thus instead of sacrificing the entire endowment of the University in order to save the building and grounds, as Governor Ramsey had suggested in his second message, and which many men believed would not suffice, more than two thirds of the nation's gift to the University had been saved.

The finances of the University being again on a sound basis, the care of its lands was restored to the state land office.

One other matter in connection with the early history of the university lands calls for separate treatment, the double university land grant. In the enabling acts of Michigan, Wisconsin, and Iowa, the section conveying lands for the use of a state university was as follows: "Seventy-two sections of land, set apart and reserved for the use and support of a University by an Act of Congress approved on.....day of....., are hereby granted and conveyed to the state."[34] In the corresponding act for Minnesota we find the following provision: "Seventy-two sections of land shall be set apart and reserved for the use and support of a State University." In the former case the act expressly declares that the lands granted were those previously reserved for the territorial university. In the case of Minnesota no reference is made to the former reservation. On the basis of this distinction the claim could be advanced that the provision of the enabling act contemplated a second grant, and Minnesota men were quick to

[31] *Annual Report of the Board of Regents*, 1867, pp. 3-5.
[32] *Ibid.*, 6-20.
[33] *Annual Report of the Board of Regents*, 1868, p. 7.
[34] *First Annual Report of the Board of Regents*, 1861, p. 21.

see the possibility. Moreover, the probable loss of the whole territorial grant strengthened the determination to secure a second grant. The first mention of the possibility of securing a double grant that is on record occurred in the Republican division of the constitutional convention. Perhaps the best idea of the conflicting opinions on this matter in the convention can be conveyed by quoting a part of the argument.

Mr. Billings. "Congress gave the Territory two townships of land. These lands have been selected, and they are now the property of the University of Minnesota. . . . Under the Enabling Act, which has been referred to so often, Congress proposes to make a further donation to the State of Minnesota, not to the Territory, to be selected by the Governor of the State, not of the Territory, a thing which is to be done in the future; thus making two separate donations for two separate purposes—one under the act of Congress, the land of which is located and is the property of the University of the Territory; and the other, of seventy-two sections, is for a State University."

Mr. North. "The gentleman is entirely mistaken, for they mean the same thing precisely, and apply to the same land."

Mr. Billings. "The gentleman says that Congress means something which they certainly do not say."[35]

From this time on this matter was one of the important problems before the state government. Nearly every report of the Board of Regents, governor's message, and auditor's report contains some reference to the matter.

Correspondence with the interior department at Washington commenced in 1858. In 1860 the regents laid the matter before Governor Ramsey, and asked him to select seventy-two sections of land.[36] The governor, however, did not wish to press the matter of the second grant until all the selections under the grant of 1851 had been accepted by the land commissioner at Washington. Thirty-six thousand acres had been turned over to the state in territorial times.

The act of 1851, setting aside lands for a territorial university, did not grant, but merely reserved the lands in question. The action of the interior department in giving the state title to four-fifths of these lands was in excess of its authority and not strictly legal. In order to make the state's title unimpeachable Congress passed an act in 1861 donating to Minnesota the lands reserved in 1851. By 1863 the state had received the balance of the grant.

Now that the first grant was disposed of, the time seemed opportune to press the claim for the second. In order to bring the matter squarely before the land department at Washington the governor caused part of the

[35] *Minnesota Convention Debates*, 489-490.
[36] *First Annual Report of the Board of Regents*, 1861, p. 23.

lands to be selected, and filed a notice of his action in the United States land office at Taylor's Falls. The commissioner of the general land office denied the state's claim and refused to give patent. The case was appealed to the secretary of the interior, but without success.

In his annual message in 1867 Governor Marshall recommended that the regents of the University should be authorized to employ counsel to prosecute the claim and to offer in payment a percentage of the lands that might be obtained.[37] The legislature gave the regents authority, with the approval of the governor, to employ counsel to assist them in prosecuting the claim of the state. Compensation was to be given upon a contingent basis in land or money, as the regents in their judgment might deem for the best interest of the University.

The regents employed Henry Beard of Washington. Governor Marshall was persuaded to go to Washington to assist in urging the justice of the state's cause. Their mission was so successful that a bill granting seventy-two additional sections to the state passed the Senate in 1867, and only failed to pass the House because of the adjournment of Congress.[38] The same measure was introduced in 1870 by Wilson of Minnesota. Although the bill received only a few minutes' consideration in each house it is evident that there was a widespread feeling that the measure was merely a blind to give Minnesota an additional grant to which previous acts did not entitle her. The vote in the House was 84 to 76 in favor of the bill.[39] In the Senate, which had passed the same measure once before, there was little opposition.[40]

The victory, however, for a time turned out to be a little less complete than was at first believed. The act directed the commissioner of the general land office to approve the selections of land made by the governor of Minnesota "to the full amount of seventy-two sections mentioned in the act of Congress approved February twenty-sixth, eighteen hundred and fifty-seven, without taking into account the lands that were reserved at the time of the admission of the State to the Union, and donated to said State by act of Congress approved March second, eighteen hundred and sixty-one."[41] This clearly contemplated a double grant; but in construing the act the commissioner of the general land office held that all university lands patented to the state after the passing of the enabling act must be taken to apply on the grant of 1870. About fifty-seven sections of the first grant had been patented to Minnesota during the territorial period. This left fifteen sections which were patented after February 26, 1857. Consequently, until

[37] "Governor's Message," in *Minnesota Executive Documents*, 1866, p. 9.
[38] *Ibid.*, 1868, p. 12.
[39] *Congressional Globe*, 41 Congress, 2 session, 4686.
[40] *Ibid.*, 4830.
[41] *Statutes at Large*, 16: 196.

the decision was reversed, the state received only fifty-seven additional sections instead of seventy-two, or a total of one hundred twenty-nine sections. It was not till nearly two decades later that the balance of the second grant was certified.[42]

In 1872, acting under the authority given by the legislature, the regents voted to give Beard permission to select 1,950 acres of the university lands as payment for his services. The selection was made and deed given in 1874. There seems to have been some doubt as to the legality of this transaction, for in 1876 the legislature passed an act declaring the deed valid.[43] The land selected was valuable pine land.

In 1868 the income from the sale of university land was again declared to be a permanent fund. But the regents were authorized to use the proceeds from the sale of grass and timber for current expenses.[44] Had this policy been adhered to it would have diminished the university fund by half a million dollars. But fortunately it was not. In 1874, $12,000 a year was appropriated to reimburse this fund for the stumpage money expended for the support of the University.[45]

The amount of the university fund on July 31, 1912, was $1,506,136.12.[46] According to the report of the tax commission for 1912 the tonnage of iron ore on university lands under mineral lease is 5,084,764.[47] Numerous drill holes have been sunk on every forty of leased land, so this estimate is perhaps not far from accurate. At twenty-five cents a ton, the agreed royalty, the known tonnage will add $1,271,191 to the university fund. Of the university lands 19,303.90 acres are unsold. Much of this is cut-over land, which as a rule does not bring a high price. It is not probable that the remaining land will bring more than $150,000. If these estimates are approximately correct the university fund will ultimately amount to about $3,000,000.

There is another permanent fund which helps to bear the expense of maintaining the University and which should, therefore, be referred to here. This is the swamp land fund. A constitutional amendment of 1881 provides that the principal of all funds derived from the sale of swamp lands shall constitute a permanent fund, and directs that one half of the proceeds of the resulting fund shall be appropriated to the common school fund and the remainder to the educational and charitable institutions of the state in proportion to cost of maintenance.

In 1907, when nearly a million dollars had accumulated, the legislature passed an act for carrying the amendment of 1881 into effect. This act

[42] "Auditor's Report," in *Minnesota Executive Documents*, 1876, 1: 329; *Auditor's Report*, 1887-1888, p. 59; 1889-1890, p. 47.
[43] *Laws of Minnesota*, 1876, chap. 93.
[44] *Ibid.*, 1868, chap. 55, sec. 1.
[45] *Ibid.*, 1874, chap. 124.
[46] *Auditor's Report*, 1911-1912, p. viii.
[47] *Report of Minnesota Tax Commission*, 1912, p. 99.

requires the state auditor and the state treasurer, at the close of each fiscal year, to transfer to the general school fund one half of the interest which has accrued from the swamp land fund, and the other half to the revenue fund. The amount transferred to the revenue fund is credited to the appropriations for the support of the state educational and charitable institutions in proportion to the cost of support of such institutions for the fiscal year preceding.[48]

July 31, 1912, the swamp land fund amounted to $2,671,727.12.[49] The state owns nearly 2,000,000 acres of swamp land. At five dollars an acre, the minimum price for which state swamp land can be sold, this will bring $10,000,000. The state tax commission estimates the tonnage of iron ore on state swamp lands now under mineral lease at 31,099,947.[50] This will add $7,774,986.75 to the swamp land fund. As large areas of state swamp land are located in Lake and Cook counties, where there are indications of iron ore, it is probable that other ore deposits will be discovered. But without making allowance for future discoveries it is safe to say that the swamp land fund will reach $20,000,000.[51]

[48] *Laws of Minnesota*, 1907, ch. 385.
[49] *Auditor's Report*, 1911-1912, p. VIII.
[50] *Report of Minnesota Tax Commission*, 1912, p. 99.
[51] Nearly every land grant to Minnesota has an interesting history, but limitations of time made it impossible to include a detailed study of more than one in this monograph.

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